
United States
Circuit Court of Appeals
For the Ninth Circuit.

TOICHI TOMIKAWA,

Claimant and Appellant,

AMERICAN OIL SCREW "PATRICIA," No. 970-A,
her cargo, engines, tackle, apparel, furniture, etc.,

Respondent,

vs.

UNITED STATES OF AMERICA,

Libelant and Appellee.

Apostles on Appeal

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

NOV 23 1934

PAUL P. O'BRIEN,

No.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Proctors.

For Claimant and Appellant:

MAX SCHLEIMER, Esq.,
355 South Broadway,
Los Angeles, California.

For Libelant and Appellee:

PEIRSON M. HALL, Esq.,
United States Attorney;
ERNEST R. UTLEY, Esq.,
Assistant United States Attorney;
JOHN J. IRWIN, Esq.,
Assistant United States Attorney,
Federal Building,
Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

UNITED STATES OF AMERICA,	:	
	:	
Libelant,	:	
	:	
against	:	No. 5567-H.
	:	
AMERICAN OIL SCREW "PATRICIA", No. 970-A, her cargo, engines, tackle, apparel, furniture, etc.,	:	Citation on Appeal.
	:	
Respondent.	:	

THE UNITED STATES OF AMERICA, SS.

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within 30 days from the date of this writ, pursuant to appeal duly allowed by the District Court of the United States, in and for the Southern District of California, Central Division, and filed in the office of the clerk of said court on September 4, 1934, in a cause wherein the American Oil Screw "Patricia", No. 970-A,

her cargo, engines, tackle, apparel, furniture, etc., and Toichi Tomikawa are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties on that behalf.

Witness the Honorable Harry A. Hollzer, Judge of the District Court of the United States, in and for the Southern District of California, Central Division, this 4th day of September, 1934, and in the one hundred and fifty-ninth year of the independence of the United States of America.

Hollzer

United States District Judge

United States of America,)
 Southern District of California,)
 State of California,) SS.
 County of Los Angeles.)

Max Schleimer, being duly sworn, deposes and says that he is of lawful age, and that on September 4, 1934, he personally served Pierson M. Hall United States Attorney, at his office, at the Federal Building, corner of Main and Temple Streets, in the City of Los Angeles, State of California, by delivering to and leaving with John Joseph Irwin, Assistant United States Attorney, copies of the following documents, to wit: Petition for Appeal, Assignment of Errors, Order Allowing Appeal

Fixing Amount of Bond for Costs and Extending Time to File Narrative Statement of the Evidence, Citation on Appeal, Notice of Appeal, Praecipe for Record on Appeal, and Notice of Filing Praecipe, in the case of United States of America, Libelant, American Oil Screw "Patricia", etc., Respondent and claimant, No. 5567-H.

Max Schleimer.

Subscribed and sworn to before me this 4th day of August, 1934.

[Seal]

F. H. Whitfield

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original No. 5567-H. United States District Court, Southern District of California, Central Division. United States of America, libelant, vs. American Oil Screw "Patricia", etc., respondent. CITATION ON APPEAL. Filed Sep. 4, 1934 R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk. Max Schleimer Proctor for appellants 355 So. Broadway Los Angeles, Calif. TU: 7714

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
)	Libelant,
)	
vs.)	No. 5567-H
)	
AMERICAN OIL SCREW "PA-)	LIBEL OF
TRICIA", No. 970-A, Her Cargo,)	INFORMATION.
Engines, Tackle, Apparel, Furniture,)	
etc.,)	
)	Respondent.

TO THE HONORABLE JUDGES OF THE DIS-
TRICT COURT FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA:

The United States of America, by Samuel W. McNabb, United States Attorney for the Southern District of California, and Frank M. Chichester, Assistant United States Attorney for said District, brings suit herein in a cause of forfeiture civil and maritime against the American Oil Screw "Patricia", No. 970-A, her Cargo, Engines, Tackle, Apparel, Furniture, etc., and against all persons intervening for their interest therein, and alleges as follows:

I.

That the Respondent, American Oil Screw "Patricia", No. 970-A, Her Cargo, Engines, etc., was seized by

Agents of the United States Coast Guard, Section Base No. 17, on the night of March 23, 1932; that the said vessel was seized for violation of the laws of the United States, and on the date of the filing of this Libel was in the custody of the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, California, and within the jurisdiction of this Honorable Court;

That the said seizure has been adopted by the Collector of Customs of the Port of Los Angeles, California, District No. 27.

II.

That the appraised value of the said American Oil Screw "Patricia", No. 970-A, Her Engines, Tackle, Apparel, Furniture, etc., is Eight Thousand Dollars (\$8,000.00).

III.

That on or about March 18, 1932, on application of T. Tomikawa, as owner of the said Respondent Vessel, there was awarded to the said Respondent Vessel by the Collector of Customs for District No. 27 the number 970-A.

IV.

That on or about March 23, 1932, the said Respondent Vessel engaged in a trade other than that for which she was licensed in violation of Section 4377 R. S., 46 U. S. C. A. 325.

V.

That because of the violation of the aforesaid section, 4377 R. S., the Respondent American Oil Screw "Patricia", No. 970-A, Her Cargo, Engines, Tackle, Apparel, Furniture, etc., has become forfeit to the United States of America.

COUNT 2.

I.

Repeats and realleges with the same force and effect as if set out in full herein all the allegations set out in Paragraphs I, II and III of Count 1 of this Libel of Information.

II.

That at the time of the seizure of the said Respondent Vessel, as aforesaid, there was seized aboard the said vessel a cargo of assorted intoxicating liquors; the appraised value of the said cargo of intoxicating liquors is Seventeen Thousand Four Hundred Ninety Dollars (\$17,490.00).

III.

That on or about March 23, 1932, a demand was made of the Master, T. Tomikawa, of the said vessel by a duly qualified officer of the United States Coast Guard to produce the manifest of the cargo of the said Respondent Vessel;

That the said Master, T. Tomikawa, failed and refused to produce said manifest in response to the demand of the said officer in violation of Section 584 of the Tariff Act of 1930, 19 U. S. C. A. 1584.

IV.

That because of the violation of the said Section, 584 of the Tariff Act of 1930, 19 U. S. C. A. 1584, the Master of the said Respondent Vessel, T. Tomikawa, has become liable to a penalty of Five Hundred Dollars (\$500.00);

That because of the violation of said Section, 584 of the Tariff Act of 1930, 19 U. S. C. A. 1584, the Master of the said vessel, T. Tomikawa, has become liable to a penalty equal to the value of the merchandise seized as the cargo of the said Respondent Vessel.

V.

That because of the violations of the Customs-Revenue Laws of the United States, as heretofore set forth, the said Respondent Vessel has become liable for the payment of the penalties which have attached therefor as provided by Section 594 of the Tariff Act of 1930, 19 U. S. C. A. 1594.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, on behalf of the United States of America, Samuel W. McNabb, United States Attorney for the Southern District of California, and Frank M. Chichester, Assistant United States Attorney for said District, pray the usual Process and Monition of this

Honorable Court to issue against the said American Oil Screw "Patricia", No. 970-A, Her Cargo, Engines, Tackle, Apparel, Furniture, etc.; that all persons concerned or interested in the said vessel, her cargo, engines, tackle, apparel, furniture, etc., may be cited to appear and show cause why a forfeiture of the same should not be decreed; and that all due proceedings being had thereon, this Honorable Court may be pleased to decree for the forfeiture aforesaid; that the said American Oil Screw "Patricia", No. 970-A, Her Cargo, Engines, Tackle, Apparel, Furniture, etc., may be condemned, as aforesaid, according to the Statutes and the Acts of Congress in that behalf provided.

Samuel W. McNabb

SAMUEL W. McNABB,

United States Attorney,

Frank M. Chichester

FRANK M. CHICHESTER,

Assistant United States Attorney.

Attorneys for Libelant.

[Endorsed]: No. 5567-H. In the District Court of the United States for the So. District of California, Central Division. United States of America, libelant, vs. American Oil Screw "Patricia" No. 970-A, her cargo, engines, tackle, apparel, furniture, etc., respondent. LIBEL OF INFORMATION. Filed Apr. 28, 1932. R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER FOR PROCESS TO ISSUE.

WHEREAS a Libel has been filed in the above entitled case on behalf of the United States of America by Samuel W. McNabb, United States Attorney for the Southern District of California,

IT IS NOW ORDERED that a monition for the attachment of the said American Oil Screw "PATRICIA", No. 970-A, Her Cargo, Engines, Tackle, Apparel, Furniture, etc., described in said libel and set forth in the title of this cause be issued and directed to the United States Marshal of the Southern District of California, commanding the said United States Marshal to take into his possession and custody the said American Oil Screw "PATRICIA", No. 970-A, Her Cargo, Engines, Tackle, Apparel, Furniture, etc.,

AND IT IS FURTHER ORDERED that the said Marshal do admonish and cite any and all persons whomsoever having or claiming to have any title or interest whatsoever in or to said American Oil Screw "PATRICIA", No. 970-A, Her Cargo, Engines, Tackle, etc., to appear in the District Court of the United States, in and for the Southern District of California, Central Division, in the courtroom of the Honorable Harry A. Hollzer, Judge of the said court in the Federal Building in the City of Los Angeles on the return day of said monition, then and there to show cause, if any there be, why the prayer of said libel should not be granted.

AND IT IS FURTHER ORDERED that Monday, the 23rd day of May, A. D., 1932, at the hour of

o'clock A. M., be and is hereby fixed as the return day of said monition, and that the said Marshal shall take the return of said monition on said day and at said hour in said courtroom.

AND IT IS FURTHER ORDERED that the United States Marshal for the Southern District of California shall cause public notice to be given of the seizure and of the taking into his possession of the property described in said libel under and by virtue of the said process herein ordered to be issued, and of the time and place assigned for the hearing of said cause, said notice to be given by publication in the Los Angeles News, a newspaper of general circulation printed, published and circulated in the City of Los Angeles within the Central Division of the Southern District of California, the said publication to be for at least two times in said newspaper and the first publication thereof to be not less than fifteen days prior to that assigned herein as the return day for said monition.

Dated this 28 day of April, 1932.

Wm. P. James,
United States District Judge.

[Endorsed]: No. 5567-H In the District Court of the United States for the So. District of California Central Division United States of America, Libelant vs. American Oil Screw "Patricia", No. 970-A, Her Cargo, Engines, Tackle, Apparel, Furniture, etc., Respondent. ORDER FOR PROCESS TO ISSUE. Filed Apr. 28, 1932. R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

United States of America	}	ss	[Seal]
Southern District of California			

THE PRESIDENT OF THE UNITED STATES
OF AMERICA:

To the Marshal of the United States for the Southern District of California, Greeting:

WHEREAS, a libel in rem hath been filed in the District Court of the United States for the Southern District of California, on the 28th day of April, in the year of our Lord one thousand nine hundred and thirty-two, by the United States of America, Libellant, vs AMERICAN OIL SCREW "PATRICIA," No. 970-A her Cargo, Engines, Tackle, Apparel, Furniture, etc., Respondent, by Samuel W. McNabb, United States Attorney for the Southern District of California, in a cause of condemnation, seizure and sale for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said American Oil Screw "Patricia," etc., may be cited in general and special to answer the premises, and all proceedings being had that the said American Oil Screw "Patricia," etc., may for the causes in the said Libel mentioned, be seized, condemned and forfeited to satisfy the demands of the Libellant.

YOU ARE, THEREFORE, HEREBY COMMANDED to attach the said American Oil Screw "Patricia" etc., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same,

or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Southern District of California, Central Division, at the Courtroom of the Honorable HARRY A. HOLLZER, Judge of the said United States District Court, in the Federal Building in the City of Los Angeles, State of California on the 23rd day of May, A. D. 1932, at 10 o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

WITNESS, the Honorable WM. P. James, Judge of said Court, at the City of Los Angeles, in the Southern District of California, this 28th day of April in the year of our Lord one thousand nine hundred and thirty-two, and of our independence the one hundred and fifty-sixth.

R. S. ZIMMERMAN

Clerk.

By Edmund L. Smith

Deputy Clerk.

Samuel W. McNabb, U. S. Attorney

Frank M. Chichester, Asst. U. S. Attorney.

Proctor for Libelant.

In obedience to the within Monition, I attached the American Oil Screw "Patricia" therein described, on the 28th day of April, 1932, and have given due notice to all persons claiming the same, that this Court will, on the 23 day of May, 1932 (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated April 28, 1932

A. C. Sittel
U. S. Marshal.

By Morris Tovil
Deputy.

[Endorsed]: Marshal's Civil Docket No. 13005½ No. 5567-H Civil U. S. District Court Southern District of California Central Division United States of America, libellant vs. American Oil Screw "Patricia" No. 970-A, Her Cargo, Engines, Tackle, Apparel, Furniture, etc., respondent. Monition returnable May 23, 1932 United States Attorney Proctor for Libelant. Issued Apr. 28, 1932 Filed May 3, 1932 R. S. Zimmerman Clerk. By Theodore Hocke Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ANSWER OF CLAIMANT, TOICHI TOMIKAWA,
TO LIBEL OF INFORMATION.

TO THE HONORABLE JUDGES OF THE DIS-
TRICT COURT FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA:

Toichi Tomikawa, owner and claimant of the oil screw vessel "Patricia", her engines, tackle, apparel, furniture, etc., as the same are proceeded against on the libel of complaint in the above entitled cause, answers said libel of complaint as follows:

AS TO COUNT 1.

I.

The claimant denies the allegations contained in paragraph marked "I" of said libel of complaint, except that on March 23, 1932, the agents of the United States Coast Guard seized the oil screw vessel Patricia, her engines, tackle, apparel, furniture, etc., and everything that was on board of said vessel, and thereafter towed her to the United States Coast Guard Base in the harbor of San Pedro, California, and while she was there in the custody of the agents of the United States Coast Guard, under said seizure, she was seized by the United States Marshall in this proceeding.

II.

The claimant has no information or belief to enable him to answer the allegations contained in paragraph marked "II" of the Libel of complaint, and placing his

denial on that ground, denies all the allegations therein contained.

III.

The claimant denies the allegations contained in paragraph marked "III" of said libel of complaint, except that on or about March 18, 1932, the claimant informed the Collector of Customs, at San Pedro, California, that he purchased the oil screw vessel Patricia and was the owner thereof, and that the said Collector of Customs authorized him to use the number 970-A on said vessel.

IV.

The claimant denies the allegations contained in paragraphs marked "IV" and "V" of said libel of complaint.

AS TO COUNT 2.

I.

The claimant as to paragraphs "I", "II", and "III" of Count 1, which by reference are made a part of paragraph "I", repeats, and realleges, with the same force and effect as if set out in full herein, all the allegations set out in paragraphs "I", "II", and "III" as to Count 1 of this answer.

II.

The claimant denies the allegations contained in paragraphs marked "II", "III", "IV", and "V" of said libel of complaint, except that on March 23, 1932, the agents of the United States Coast Guard seized the oil screw vessel "Patricia", her engines, tackle, apparel, furniture, etc., and everything that was on board of said vessel, and thereafter demanded that the claimant produce the manifest of cargo of said vessel.

AS FOR A FIRST AFFIRMATIVE DEFENSE TO
COUNTS 1 and 2 OF THE LIBEL OF COM-
PLAINT, THE CLAIMANT ALLEGES:

I.

That the claimant at all times hereinafter stated, was, and still is, a citizen of the Empire of Japan.

II.

That on or about March 15, 1932, the claimant purchased the oil screw vessel Patricia from a citizen of the Empire of Japan, her measurements being, length 82 feet, breadth 18.5 feet, draft loaded 8.75 feet; equipped with a Fairbanks Morse engine, 1924, 100 horsepower, and when loaded, her maximum speed is 7 knots per hour.

III.

The claimant, on or about March 18, 1932, informed the Collector of Customs at San Pedro, California, that he was a citizen of the Empire of Japan; that he purchased the said oil screw vessel Patricia; that he also informed him of her said measurements, horsepower engine, and speed; and that he was the sole owner of said vessel, and thereupon the said Collector of Customs permitted and authorized him to use the number 970-A on said oil screw vessel Patricia.

IV.

That the said Collector of Customs had no authority or jurisdiction to number the said vessel under the provisions of Title 46 USCA, Ch. 2, §11, and Title 46 USCA, Ch. 12, §§251, 252, and that by reason thereof

the said numbering of said vessel is of no legal force or effect, and the nationality of the said vessel was, and still is, of the Japanese Empire.

AS FOR A SECOND AFFIRMATIVE DEFENSE TO COUNTS 1 and 2 OF THE LIBEL OF COMPLAINT, THE CLAIMANT ALLEGES:

I.

The claimant repeats and realleges, with the same force and effect as if set out in full herein, all the allegations set out in paragraphs "I", "II", "III", and "IV" of the First Affirmative Defense of this answer.

II.

That on March 23, 1932, the said oil screw vessel Patricia was on the high seas at a place 19 miles off Point San Juan, California, which was a distance over four leagues from the nearest point to land, and that the said oil screw vessel Patricia could not traverse in one hour the said distance, that is to say, from the place where she was then on the high seas to the coast of the United States.

III.

That on March 23, 1932, while the said oil screw vessel Patricia was at the place hereinbefore stated, agents of the United States Coast Guard came on board of her, against the protest and objection of the said claimant, and without any warrant or any other legal process of law, and without any legal right or authority, thereupon seized the said oil screw vessel Patricia, her engines, tackle, apparel, furniture, etc., and everything that was on board of said vessel, against the protest and objec-

tion of said claimant. That thereafter the said agents of the United States Coast Guard towed the said oil screw vessel Patricia to the United States Coast Guard Base in the harbor at San Pedro, California, against the protest and objection of the said claimant. That thereafter the said agents of the United States Coast Guard tied the said oil screw vessel Patricia to the dock at said base and refused to permit her to proceed on the high seas, against the protest and objection of the said claimant.

IV.

That the aforesaid seizure of the said oil screw vessel Patricia made by the said agents of the United States Coast Guard, was without process of law, unlawful, illegal, and contrary to law, and in violation of the rights of the said claimant.

V.

That thereafter, and while the said oil screw vessel Patricia was tied at the dock of the said United States Coast Guard Base, unlawfully, and against the protest and objection of said claimant, the United States Marshall seized the said oil screw vessel Patricia, under the pretended process issued in this action, and took her in his custody, against the protest and objection of the said claimant and in violation of his rights.

VI.

That the aforesaid seizure of the said oil screw vessel Patricia, made by the said United States Marshall, was in violation of law, unlawful, illegal, and contrary to law, and in violation of the rights of the said claimant.

VII.

That by reason of the premises this court has not acquired jurisdiction over the said oil screw vessel Patricia, her engines, tackle, apparel, furniture, etc., and everything that was on board of said vessel.

AS FOR A THIRD AFFIRMATIVE DEFENSE TO COUNTS 1 and 2 OF THE LIBEL OF COMPLAINT, THE CLAIMANT ALLEGES:

I.

The claimant repeats and realleges, with the same force and effect as if set out in full herein, all the allegations set out in paragraphs "I", "II", "III", and "IV" of the First Affirmative Defense of this answer, and all the allegations set out in paragraphs "II", "III", "IV", "V", and "VI" of the Second Affirmative Defense of this answer.

II.

That at the time the agents of the United States Coast Guard approached the said oil screw vessel Patricia on the high seas, aforesaid, the said claimant and master of said vessel did not proceed, or intend to *procede*, to the coast of the United States, nor to deliver, or cause to be delivered, any goods that was on board of the said vessel, but that the said vessel, at the time and place of the seizure, aforesaid, was in the position only for the purpose of taking bearings in order to ascertain the exact position where the said oil screw vessel Patricia was on the high seas, and for no other purpose.

III.

That by reason of the premises the said oil screw vessel Patricia did not intend to violate any of the laws of the United States, nor did she violate any of the laws of the United States, and therefore this court has not acquired jurisdiction over the said oil screw vessel Patricia, her engines, tackle, apparel, furniture, etc., and everything that was on board of said vessel.

WHEREFORE, the said claimant prays that the libel of complaint be dismissed with costs and judgment be entered in his favor, directing that the oil screw vessel Patricia, her engines, tackle, apparel, furniture, etc., and everything that was on board of said vessel, be returned to him, and that the agents of the United States Coast Guard, or the United States Marshall, be directed to accompany the said oil screw vessel Patricia up to the place where she was seized on the high seas, and be permitted to proceed on the high seas as to claimant may seem proper, and for such other and further order and relief as to the court may seem meet and proper.

Toichi Tomikawa
 Toichi Tomikawa,
 Claimant.

Max Schleimer
 Max Schleimer
 Att'y for Claimant,
 Toichi Tomikawa,
 609-610 Lincoln Bldg.,
 742 So. Hill St.,
 Los Angeles, Calif.
 TU 7714.

STATE OF CALIFORNIA)
) SS.
 COUNTY OF LOS ANGELES)

Toichi Tomikawa, being by me first duly sworn, deposes and says: That he is the Claimant in the above entitled matter; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

TOICHI TOMIKAWA
 Toichi Tomikawa

Subscribed and sworn to before me this)
 1 day of August, 1932.)
)

JACK G. SHAPIRO (Seal)
 Notary Public in and for the County of Los Angeles,
 State of California.

[Endorsed]: Original No. 5567-H In the United States District Court in and for the Southern District of California Central Division United States of America, Libelant, vs. American Oil Screw "Patricia" No. 970-A, etc., Respondent. ANSWER OF CLAIMANT, TOICHI TOMIKAWA, TO LIBEL OF INFORMATION. Received copy of the within Answer to Libel of Information this 17 day of Oct. 1932 Frank M. Chichester Attorneys for libelant Filed Oct. 17, 1932. R. S. Zimmerman, Clerk By C. A. Simmons, Deputy Clerk. Max Schleimer Att'y for Claimant, Toichi Tomikawa, 609-610 Lincoln Bldg., 742 So. Hill St., Los Angeles, Calif. TU 7714.

[TITLE OF COURT AND CAUSE.]

STIPULATION FOR COSTS.

The premium charged for this bond by the Western Surety Company is \$10.00.

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, a Libel was filed in this Court on the 28th day of April, 1932, by the United States of America, Libelant, against American Oil Screw, "Patricia," No. 970-A Her cargo, engines, *takle*, apparel, furniture, etc., for the reasons and causes in the said libel mentioned; and

WHEREAS, a claim has been filed in said cause by Toichi Tomikawa as owner of said vessel and Western Surety Company, a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and authorized to do a surety business in the State of California, hereby consenting that in case of default or contumacy on the part of either claimant or surety, execution to the amount of Two Hundred Fifty (\$250.00) Dollars may issue against its goods, chattels, and land.

NOW, THEREFORE, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulator undersigned is hereby bound to the libelant herein in the sum of Two Hundred Fifty (\$250.00) Dollars; conditioned that said claimant shall pay all the costs and expenses which shall be awarded against him by any final decree of this Court, and on appeal, by the appellate court.

IN WITNESS WHEREOF, the stipulator has affixed its name and seal this 23rd day of May, 1932.

[Seal]

WESTERN SURETY COMPANY

By P. F. Kirby,

Vice-President

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On this 23rd day of May A. D. 1932, before me E. D. Tate, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared P. F. Kirby, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] E. D. Tate,
Notary Public in and for said County and State.
My Commission Expires Sept. 15, 1932.

I hereby approve the foregoing bond this 23rd day of May, 1932.

R. S. Zimmerman,
Clerk U. S. District Court, Southern District of
California

By Edmund L. Smith,
Deputy Clerk.

AFFIDAVIT OF SURETY COMPANY or AFFI-
DAVIT OF ATTORNEY-IN-FACT or AGENT
OF SURETY COMPANY.

[Endorsed]: 5567-H. STIP FOR COSTS OF
TOICHI TOMIKAWA. Filed May 23, 1932 R. S.
Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

AMENDED LIBEL OF INFORMATION
TO THE HONORABLE JUDGES OF THE DIS-
TRICT COURT FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA:

The United States of America, by John R. Layng, United States Attorney for the Southern District of California, and Frank M. Chichester, Assistant United States Attorney for said District, brings suit herein in a cause of forfeiture civil and martime against the American Oil Screw "Patricia", No. 970-A, her Cargo, Engines, Tackle, Apparel, Furniture, etc., and against all persons intervening for their interest therein, and alleges as follows:

I.

That the Respondent, American Oil Screw "Patricia", No. 970-A, her Cargo, Engines, etc., was seized by Agents of the United States Coast Guard, Section Base No. 17, on the night of March 23, 1932, on the high seas at a point ten and one-half (10-1/2) miles southwest true from San Mateo Rocks, off the coast of California; that the said vessel was seized for violation of the laws of the United States, and on the date of the filing of the Libel was in the custody of the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, California, and within the jurisdiction of this Honorable Court;

That the said seizure has been adopted by the Collector of Customs of the Port of Los Angeles, California, District No. 27.

II.

That the appraised value of the said American Oil Screw "Patricia", No. 970-A, her Engines, Tackle, Apparel, Furniture, etc., is Eight Thousand Dollars (\$8,000.00).

III.

That on or about March 18, 1932, on application of T. Tomikawa, as owner of the said Respondent Vessel, there was awarded to the said Respondent Vessel by the Collector of Customs for District No. 27 the number 970-A.

IV.

That on or about March 23, 1932, the said Respondent Vessel engaged in a trade other than that for which she was licensed in violation of Section 4377 R. S., 46 U. S. C. A. 325.

V.

That because of the violation of the aforesaid section, 4377 R. S., the Respondent, American Oil Screw "Patricia", No. 970-A, her Cargo, Engines, Tackle, Apparel, Furniture, etc., has become forfeit to the United States of America.

COUNT 2.

I.

Repeats and realleges with the same force and effect as if set out in full herein all the allegations set out in Paragraphs I, II, and III of Count 1 of this Amended Libel of Information.

II.

That at the time of the seizure of the said Respondent Vessel, as aforesaid, there was seized aboard the said

vessel a cargo of assorted intoxicating liquors; the appraised value of the said cargo of intoxicating liquors is Seventeen Thousand Four Hundred Ninety Dollars (\$17,490.00).

III.

That on or about March 23, 1932, a demand was made of the Master, T. Tomikawa, of the said vessel by a duly qualified officer of the United States Coast Guard to produce the manifest of the cargo of the said Respondent Vessel;

That the said Master, T. Tomikawa, failed and refused to produce said manifest in response to the demand of the said officer in violation of Section 584 of the Tariff Act of 1930, 19 U. S. C. A. 1584.

IV.

That because of the violation of the said Section 584 of the Tariff Act of 1930, 19 U. S. C. A. 1584, the Master of the said Respondent Vessel, T. Tomikawa, has become liable to a penalty of Five Hundred Dollars (\$500.00);

That because of the violation of said Section 584 of the Tariff Act of 1930, 19 U. S. C. A. 1584, the Master of the said vessel, T. Tomikawa, has become liable to a penalty equal to the value of the merchandise seized as the cargo of the said Respondent Vessel.

V.

That because of the violations of the Custom-Revenue Laws of the United States, as heretofore set forth, the

said Respondent Vessel has become liable for the payment of the penalties which have attached therefor as provided by Section 594 of the Tariff Act of 1930, 19 U. S. C. A. 1594.

COUNT 3.

I.

Repeats and realleges with the same force and effect as if set out in full herein all the allegations set out in Paragraphs I, II, and III of Count 1, of this Amended Libel of Information.

II.

That on or about March 23, 1932, the number 970-A granted to the said Respondent Vessel was knowingly and fraudulently used for the said vessel when she was not entitled to the benefit thereof; that the said vessel engaged in trade on said date in violation of Section 4189 R. S., 46 U. S. C. A. 60.

III.

That because of the violation of the aforesaid Section 4189 R. S., 46 U. S. C. A. 60, the Respondent, American Oil Screw "Patricia", No. 970-A, her Cargo, Engines, Tackle, Apparel, Furniture, etc., has become forfeit to the United States of America.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, on behalf of the United States of America, John R. Layng, United States Attorney for the Southern District of California, and Frank M. Chichester, Assistant United States Attorney for said District, pray

the usual Process and Monition of this Honorable Court to issue against the said American Oil Screw "Patricia", No. 970-A, her Cargo, Engines, Tackle, Apparel, Furniture, etc.; that all persons concerned or interested in the said vessel, her cargo, engines, tackle, apparel, furniture, etc., may be cited to appear and show cause why a forfeiture of the same should not be decreed; and that all due proceedings being had thereon, this Honorable Court may be pleased to decree for the forfeiture aforesaid; that the said American Oil Screw "Patricia", No. 970-A, her Cargo, Engines, Tackle, Apparel, Furniture, etc., may be condemned, as aforesaid, according to the Statutes and the Acts of Congress in that behalf provided.

John R. Layng

JOHN R. LAYNG,

United States Attorney

Frank M. Chichester

FRANK M. CHICHESTER,

Assistant United States Attorney

Attorneys for Libelant.

[Endorsed]: No. 5567-H. District Court of the United States, Southern District of California, Central Division. United States of America, libelant, vs. American Oil Screw "Patricia", No. 970-A, her cargo, engines, tackle, apparel, furniture, etc., respondent. AMENDED LIBEL OF INFORMATION. Filed Mar. 29, 1933. R. S. Zimmerman, Clerk By Theodore Hocke, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

—————
HON. HARRY A. HOLLZER, JUDGE
—————

UNITED STATES OF AMERICA,)	
)	
Libelant,)	
)	
-vs-)	
)) No. 5567-H
AMERICAN OIL SCREW "PATRICIA",)	
NO. 970-A, Her Cargo, Engines, Tackle,)	
Apparel, Furniture, etc.,)	
)	
Respondent.)	

Narrative Statement of the Evidence.

Narrative Statement of the Evidence to be used by the appellants on their appeal from the decree in the above numbered and entitled action, and for any and all purposes for which such Narrative Statement of the Evidence may properly be used:

Be it remembered, that this cause came on for hearing on the appellant's objection to the jurisdiction of the court and the motion to quash this proceeding and the seizure made herein by the Coast Guard, before the Hon. Harry A. Hollzer, one of the judges in the above entitled court. The libelant appearing by S. W. McNabb,

United States Attorney, and Frank M. Chichester, Assistant United States Attorney as its attorneys, and said respondent and claimant, Toichi Tomikawa, by Max Schleimer as their proctor. The following testimony and no other was taken and the following evidence, both oral and documentary, and no other was introduced and the following proceedings and no other were had, to wit:

(Proclamation read as follows by Deputy United States Marshal):

“Hear ye, hear ye! All persons having or pretending to have any right, title, or interest in American Oil Screw “Patricia”, No. 970-A, attached this 28th day of April, 1932, come into court and answer this libel of United States of America, on pain of being pronounced in contumacy and default, and having the said libel taken pro confesso against you.”

MR. SCHLEIMER: May it please your Honor, in case number 5567-H, United States of America versus American Oil Screw “Patricia”, I appear especially on behalf of Mr. Toichi Tomikawa, the Claimant, and I file a special notice of appearance, and do not appear generally. I also file a special notice of appearance, a copy of which I serve on counsel. I ask permission to file an objection to the jurisdiction of this Honorable Court and a motion to quash, and in support thereof I file the petition. All these documents show that I appear

specially. I would like to hand up a memorandum to your Honor, and your Honor will pardon me for submitting it in the form as I have it here. I served a copy of it on the District Attorney.

[TITLE OF COURT AND CAUSE.]

The following is in the words and figures of the Objection to Jurisdiction and Motion to Quash Seizure and to Dismiss Proceeding.

COMES now Toichi Tonnikawa, the claimant in the above entitled cause, appearing specially and solely for the purpose to object to the jurisdiction and power of this court over the said vessel "Patricia", and not intending to submit the said vessel to the jurisdiction of this court, as a party thereto, and moves the court to quash and set aside and to declare void and of no effect the attempted or pretended seizure of the said vessel "Patricia" herein, and all process issued herein against said vessel, and all proceedings had herein against said vessel, upon the ground that at the time of the attempted or pretended seizure of the said vessel herein, the said claimant was, and still is, the sole and only owner of said vessel, and was, and still is, a citizen of the Empire of Japan, and that the said vessel, at the time of the attempted or pretended seizure, was a foreign vessel and on the high sea over 4 leagues from any coast of the United States, and that the said vessel was, at the time of the attempted or pretended seizure, without the bor-

ders and boundries of these United States, and wholly within the borders and boundries of some foreign country or nation, and of such acts and deeds only the courts of such foreign country or nation, and not this court, or any court within these United States, has jurisdiction.

Dated, Los Angeles, California, May 23, 1932.

Max Schleimer

Max Schleimer

Att'y for Claimant, Toichi Tomikawa, Specially as above indicated, Office and Post-office address, 609-610 Lincoln Bldg., 742 So. Hill St., Los Angeles, Calif. TU 7714.

[Endorsed]: Receipt of a copy and filed May 23, 1932.

[TITLE OF COURT AND CAUSE.]

The following is in the words and figures of the Petition to Quash Seizure and all process and Proceedings based thereon.

To the Judges of the District Court of the United States, in and for the Southern District of California, Central Division:

Toichi Tomikawa, your petitioner, respectfully shows:

I.

That your petitioner is a citizen of the Empire of Japan, and resides at #336 Fries St., Wilmington, California.

II.

That your petitioner is the claimant of the vessel "Patricia" herein, and appears specially and solely for the purpose of objecting to the jurisdiction of this court, and not intending to submit himself and the said vessel to the jurisdiction of this court, as a party thereto, but solely for the purpose to move the court to quash and set aside and to declare void and of no effect the attempted or pretended seizure of said vessel, and all process issued herein against said vessel, and all proceedings had herein against said vessel, upon the grounds stated in the Objection to the Jurisdiction and Motion to Quash the seizure, etc.

III.

That your petitioner is the owner of the vessel "Patricia" with its engines, tackle, apparel, and furniture, and has been as such since March , 1932.

IV.

That the said vessel is 80 feet in length and 18 foot beam, and is equipped with a Fairbanks Morse Engine, 100 Horsepower, 1924, and has not been registered, enrolled, licensed, or documented under the laws of the United States, and could not have been registered, enrolled, licensed or documented because your petitioner is the sole owner of same and not a citizen of the United States, but is a citizen of the Empire of Japan. Therefore said vessel is a foreign vessel.

V.

That on March 23, 1932, your petitioner was on board of the said vessel "Patricia" and in full charge thereof

as its master, and while the said vessel was on the high sea and located over 4 leagues from any coast of the United States, several officers of the Coast Guard Cutter #259 came on board and arrested your petitioner and his crew, and seized the said vessel against his will and protest.

VI.

That thereafter, and on April 28, 1932, the said libelant filed with the clerk of this court a libel of information against the said vessel, and thereafter, and on April 28, 1932, a monition was issued out of this court returnable May 23, 1932.

VII.

That thereafter, the Marshal of the United States, in and for the Southern District of California, Central Division, seized the said vessel and took same into his possession and custody and the said vessel is still in his possession under said process issued herein.

VIII.

That the said seizure made by the officers of the Coast Guard Cutter #259 was unlawful and in violation of the laws of the United States, for the reason that the seizure of the said vessel was wholly done or performed without the borders and boundries of the United States, and wholly within the borders and boundries of some foreign country or nation, and of such acts and deeds only the courts of such foreign country or nation, and

not this court, or any court within these United States, has jurisdiction, and that because of that, the seizure made by the said Marshall was likewise unlawful and in violation of the laws of the United States, for the following reasons, to wit: That the officers of the Coast Guard Cutter #259 had no legal right, power, or authority to go on board of said vessel and seize the said vessel for the reason that she was then located on the high sea and over 4 leagues from any coast of the United States, and was a foreign owned vessel, as hereinbefore stated, and that by reason thereof this court did not acquire jurisdiction over said vessel, and that the process issued out of this court to the said Marshall to seize the said vessel is null and void, and that the said Marshall is detaining the said vessel against the will and protest of your petitioner and contrary to law.

IX.

That no previous or other application was made to any court or judge.

WHEREFORE, your petitioner prays that the court fix the time of the hearing of said objections and motion and hear the witnesses to be produced in support thereof; that the attorneys for the libelant be notified and that the court direct an order to the said Marshall to return the said vessel, engines, tackle, apparel, and furniture to your petitioner, the property of your petitioner.

Dated, Los Angeles, California, May 23, 1932.

Toichi Tomikawa,
 Toichi Tomikawa,
 Petitioner.

Max Schleimer
 Max Schleimer,

Att'y for Claimant, Toichi Tomikawa, Specially as above
 indicated, Office and Post-office address, 609-610
 Lincoln Bldg., 742 So. Hill St., Los Angeles, Calif.
 TU 7714.

UNITED STATES OF AMERICA,)
 SOUTHERN DISTRICT OF CALIFORNIA,)
 CENTRAL DIVISION,) SS.
 COUNTY OF LOS ANGELES.)

Toichi Tomikawa, being duly sworn, deposes and says
 that he is the petitioner named in the foregoing petition
 subscribed by him; that he has read the contents thereof,
 and that the same is true of his own knowledge except
 such matters as are thereon stated on information and
 belief, and as to such statements he believes it to be true.

Toichi Tomikawa
 Toichi Tomikawa.

Subscribed and sworn to before me this 23rd day of
 May, 1932.

[Seal]

Max Schleimer

Notary Public in and for the County of Los Angeles,
 State of California.

[Endorsed]: Receipt of a copy and filed May 23,
 1932.

[TITLE OF COURT AND CAUSE.]

The following is in the words and figures of the Special Appearance.

To the Clerk of the District Court of the United States, Southern District of California, Central Division:

PLEASE enter the appearance of Toichi Tomikawa, claimant of the vessel "Patricia" herein, and myself, as his attorney, specially and for the sole purpose of objecting to the jurisdiction of this court, and for the purpose of herein to move to dismiss this proceeding, on the ground that at the time of the seizure of said vessel, the said claimant was, and still is, the owner of said vessel, and was, and still is, a citizen of the Empire of Japan, and that the said vessel was on the high sea over 4 leagues from the coast of the United States.

Dated, Los Angeles, California, May 23, 1932.

Max Schleimer

Att'y for Claimant, Toichi Tomikawa, Specially as above indicated, Office and Post-office address, 609-610 Lincoln Bldg., 742 So. Hill St., Los Angeles, Calif. TU 7714.

[Endorsed]: Receipt of a copy and filed May 23, 1932.

[TITLE OF COURT AND CAUSE.]

The following is in the words and figures of the Notice of Special Appearance to Opposing Counsel.

PLEASE TAKE NOTICE that, I, the undersigned, hereby appear in the above entitled proceeding for Toichi

Tomikawa, claimant of the vessel "Patricia" herein, specially and solely for the purpose of objecting to the jurisdiction of this court, and for the purpose of herein to move to dismiss this proceeding, on the ground that at the time of the seizure of said vessel, the said claimant was, and still is, the owner of the said vessel, and was, and still is, a citizen of the Empire of Japan, and that the said vessel was on the high sea over 4 leagues from the coast of the United States.

PLEASE TAKE FURTHER NOTICE, that the undersigned does not appear for any of the other respondents in said proceeding nor does he appear generally for the said claimant, or otherwise than as herein expressly specified.

Dated, Los Angeles, California, May 23, 1932.

Yours, etc.,

Max Schleimer

Max Schleimer

Att'y for Claimant Toichi Tomikawa, Specially as above indicated, Office and Post-office address, 609-610 Lincoln Bldg., 742 So. Hill St., Los Angeles, Calif. TU 7714.

To Mr. Samuel W. McNabb,
United States Att'y., and

Mr. Frank Chichester,
Ass't United States Att'y.,
Att'ys for libelant.

[Endorsed]: Receipt of a copy and filed May 23, 1932.

THE COURT: Is this the matter about which counsel conferred in chambers last Saturday?

MR CHICHESTER: Yes.

MR SCHLEIMER: Yes, your Honor.

THE COURT: Then we will set the proceeding down for this afternoon at 2 o'clock.

MR CHICHESTER: At this time we move that the default of all parties not appearing be entered.

THE COURT: So ordered.

(Whereupon an adjournment was had until the hour of 2:00 o'clock P. M. of the same day.)

LOS ANGELES, CALIFORNIA,
MONDAY, MAY 23, 1932.
4:40 o'clock P. M.

THE COURT: United States versus American Oil Screw "Patricia".

MR CHICHESTER: Ready for the Government, your Honor.

MR SCHLEIMER: Ready, your Honor.

THE COURT: We are ready to proceed now in this libel proceeding.

MR SCHLEIMER: We are ready, your Honor, but I don't know how late your Honor is going to hold court today.

THE COURT: Well, we will give you a little time, anyway, as much as we can. I understand that the owner of the boat is appearing here specially, objecting to the court's exercising jurisdiction?

(Testimony of Toichi Tomikawa)

MR SCHLEIMER: Yes, your Honor.

THE COURT: Upon the grounds of the boat being owned by an alien, and upon the further ground the boat was seized more than four leagues off shore?

MR CHICHESTER: That's true, your Honor. I don't know what counsel intends to do in the way of offering evidence as to the distance the boat was from shore at the time of seizure, but as to the other question of alien ownership, I think that question will become moot in the event your Honor finds for the Government; hence, I would suggest that in the order of proof we could dispose of the question of the distance of the vessel from the shore, and we wouldn't have to go into the question of ownership of the vessel.

THE COURT: We rule the burden is upon the party especially appearing to go forward with the proof.

MR SCHLEIMER: Will your Honor grant me an exception?

THE COURT: Yes.

MR SCHLEIMER: Mr. Tomikawa.

TOICHI TOMIKAWA,

called as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

In answer to MR SCHLEIMER:

My name is Toichi Tomikawa. My business is fishing. I remember the 23rd day of March, 1932. I was on a vessel known as Patricia. I was the master of that vessel on that day. On March 23, 1932, between half past two and three o'clock. In the afternoon. I was

(Testimony of Toichi Tomikawa)

taking my bearings and location to ascertain where I was. I looked at the highest point of Catalina Island. About the middle of the island. And I find out the point, how many miles it is, where I was. I find out my place about 10 miles distant from the point up to the time when I started. I used a compass to determine my distance by sighting the highest point on Catalina Island. It was about half past two. In the afternoon. It showed on compass west one-quarter north. And some one point north northeast. In other words, my compass pointed northeast towards San Juan Point, and northwest one quarter to the highest point on Catalina Island. I had intentions to stop the engine. Now, after I looked at the compass I took out chart and figured out to indicate. At time the cutter came alongside of my boat I was at this place. (Indicating).

(Counsel marks letter A)

Place marked A when you first saw the Revenue Cutter. My boat was at the mark A. Yes that was where the Revenue Cutter came alongside of my boat. I have been fishing more than 15 years, operating boats, and I was on it the master and operator, my own self. I know how to take measurements on a map of this kind. By 15 years experience. I took the measurements on the map to find out what position my boat Patricia was at the time the Revenue Cutter came alongside of it. I saw this place, highest point at Catalina Island.

(Marked B)

I saw at that time on compass west one quarter north, and on other side of the boat I saw mountain. Santiago Peak. Then, on the chart I make two lines from two

(Testimony of Toichi Tomikawa)

places what I saw on compass. I mean the lines from A to C, and from A to B. I used this instrument. I moved it like this way. I kept this point here, and moved this one, and hold this by moving this one, and then come to the center of the compass.

Q BY THE COURT: What does that chart show?

A That is the direction of compass on this chart.

MR SCHLEIMER: With your Honor's permission I will mark that.

THE COURT: Yes.

(Counsel marks on map.)

THE COURT: D represents the direction of compass bearings on the chart.

Q BY MR SCHLEIMER: Now, after you had done what you have indicated, what else did you do?

A Now, I see this point.

MR SCHLEIMER: Wait a minute, please. Indicating the point marked B?

A I used the instrument like this is.

Q You used the same instrument?

A According to what the compass shows.

Q. What do you call this instrument here?

A I don't know, but this is used to make two lines.

Q Now, go right ahead, will you?

THE COURT: You moved the measuring device down to this same portion of the chart which is marked D?

Q BY MR SCHLEIMER: That is here, you moved it over here?

A Yes.

(Testimony of Toichi Tomikawa)

Q And then, what did you do?

A Then I find out these two lines from highest points to my place.

Q Indicated by A?

A And from Santiago Peak I could see to point A. Those two lines, when two lines cross, that is location where I was.

Q You mean by that when those two lines commencing from B to A and C to A, when they come close together, that indicated the position where your vessel was at that time?

A Yes, sir.

Q All right now, will you tell us what is the distance, if you know?

A Yes, sir.

Q From A, from the letter A as indicated in red pencil to—where is San Juan Pt. here?

A. That is the point. (Indicating.)

MR SCHLEIMER: May we mark that E?

THE COURT: Yes.

(Counsel marks on map.)

Q BY MR SCHLEIMER: Now, will you tell his Honor the distance from A indicated in red pencil, the letter A, to the place indicated in red pencil E on this map?

A That was, I remember, 19 miles from the shore, off San Juan Point.

MR SCHLEIMER: I offer this map in evidence, may it please your Honor.

THE COURT: Will you ask him if that is the chart that he had with him on the boat?

(Testimony of Toichi Tomikawa)

In answer to MR SCHLEIMER: I did not have this chart with me on the boat. I used the same kind of chart on the boat. I did not take the chart along when they took me off the boat Patricia.

THE COURT: Well, we will mark it then as Claimant's Exhibit.

MR CHICHESTER: May it please the Court, I would like to ask a question of the witness on voir dire if I may.

THE COURT: Very well.

VOIR DIRE EXAMINATION

BY MR CHICHESTER:

Q How do you know that the lines which you have marked on the chart which is offered in evidence, the lines marked AC and AB are marked in the same direction as the lines on the chart that was on the boat?

A I don't know.

Q In other words, how do you know that these lines that I am indicating are in the same direction on this chart as on the chart when you had it out on the boat?

A This is about the same chart that I used.

DIRECT EXAMINATION (Cont'd)

BY MR SCHLEIMER:

Q Is it the same or another kind?

A It must be the same.

Q There is only one chart used by the Government, isn't that right?

A Yes.

MR CHICHESTER: I don't mean that. I mean, tell the judge, how do you know that these here lines

(Testimony of Toichi Tomikawa)

that you have made here are the same as the lines on the other chart that you made on the boat?

A Now, this chart is issued by the Government office, and the other is issued by the Government office, but I don't know whether this is the same.

THE COURT: Well now, the chart that you had on the Patricia, has that got some lines drawn like this from A to B and A to C?

A. No, sir, if we marked like this every line we couldn't use the chart in the future, so we don't have to mark it at all.

Q In other words, the chart you had on the boat was not marked with lines AB and AC? You simply figured this out without drawing any lines when you were on the boat? Did you have a rule like that on the boat?

A Yes.

Q Is that the rule you had on the boat?

A About the same size I had on the Patricia.

Q But you left it on the boat?

A Yes.

Q BY MR SCHLEIMER: Did you have another instrument besides that? You had another one just now?

Q BY THE COURT: Did you have a compass on the boat?

A Yes.

Q And you had a rule like this you are holding in your hand?

A Yes.

(Testimony of Toichi Tomikawa)

Q BY MR SCHLEIMER: Did you have one like that also?

A Yes, a compass.

THE COURT: Now, when you took your measurements on the boat, did you write them down anywhere?

A I write them in my mind, sometimes make a memorandum.

Q Did you make a memorandum that day?

A I think so, but I don't have it.

Q You haven't got it?

A I don't have to. I keep it in my mind.

Q Well, do you remember whether you saw a memorandum which you made on March 23rd?

A What is it?

MR SCHLEIMER: His Honor wants to know, do you remember if you made a memorandum on March 23rd?

A Yes, I keep it in my mind.

Q The Court wants to know whether you made a memorandum in writing?

A On a little scratch paper, small piece of paper, but it wasn't so much important.

Q The Court asked you what did you do with that piece of paper.

A I don't know what I have done with it.

Q BY THE COURT: When was the last time you saw the paper?

A At the time I finished, after I make the indications on this chart and leave it on the table.

(Testimony of Toichi Tomikawa)

In answer to MR SCHLEIMER:

The eating table. In the cabin. The Patricia cabin where I draw on this chart. I mean to tell the Court that in the cabin of the Patricia there is a table. I made my calculations to find out where I was upon the chart on that table. I made a memorandum. I left it on the table.

MR SCHLEIMER: May we offer this in evidence, your Honor, at this time?

THE COURT: We will mark it Intervenor's Exhibit A.

MR CHICHESTER: We object to that offer on the ground it is incompetent, no proper foundation laid as to its authenticity as to the directions, or as to the memory of the defendant in reaching his calculations in making the map.

THE COURT: Well, we are receiving it merely for the purpose of illustrating the witness's testimony. You will proceed.

In answer to MR SCHLEIMER: I did not hear whistle before the Coast Guard Cutter came alongside of the Patricia. First I saw the Revenue Cutter on the port side of my vessel. She turned around and came to my starboard. I was standing waiting on that side, and I seen the Coast Guard vessel was quite close to us, and I see their motions to make us stop the boat and at the same time I heard the whistle. We stopped our engine; no, not stopped the engines. We stopped the running of the boat. Then, the Coast Guard came alongside of our vessel and one man jumped in; one man from

(Testimony of Toichi Tomikawa)

the Coast Guard vessel went on board my vessel. I can point out the man in the court room that came on board my vessel.

THE COURT: Let the record show the witness identifies Mr. Blondin as the man who came on board the Patricia from the Coast Guard Cutter.

In answer to MR SCHLEIMER: Two or three more come on board after that. I don't remember exactly, but less than two. They told me and the crew to get on board their vessel, the Revenue Cutter. The crew and I got on the Revenue Cutter.

THE COURT: Q The Coast Guardmen looked over your boat?

A Yes, I think.

Q Now then, was your boat towed in by the Coast Guard cutter?

A Yes.

In answer to MR. SCHLEIMER: It took them about 20 minutes from the time I got on deck of the Coast Guard to tie the Patricia to their boat in order to start the towing. After they tied the vessel Patricia to their boat, they went in direction I believe to the nearest point nearest mainland. I think northeast direction. The revenue cutter was going about 7 every hour; that's known by my long time experience, because I always operate the speed the same. The revenue cutter started to tow the Patricia. between 3 and 3:30. She was

(Testimony of Toichi Tomikawa)

turned this way, and this way and this way (indicating). The first time, I believe, east, northeast, they were running. And then about northeast. At 7 o'clock they came to nearest place to shore; it was San Juan point. I saw that. From the time the Coast Guard cutter started to tow the Patricia and up to the time we reached the point of San Juan I saw vessel in sight. That was not earlier than 4 o'clock. That vessel was going southeast. I was at that time when I saw this vessel on the deck of the Coast Guard cutter, top of the engine place; that was where they ordered me to stay. I saw a steamship. Its hull was painted black, a two tan colored mast. Two masts. It *looked* like a passenger steamer, and the funnel had the same color. The mast, and I saw a special mark on the chimney. I am able to understand what company's steamship it is. I believe it is Admiral Line. That steamer crossed bow of the revenue cutter that was towing in the Patricia. When it was nearest it was the distance that I can see the mark of the company. The distance was about a mile and a half or two miles, not all of two miles.

THE COURT: I think we will have to take a recess.

MR. SCHLEIMER: All right, your Honor; until when?

THE COURT: This case will be continued to 3:30 P. M. tomorrow afternoon, to which time the witnesses are directed to return.

(Testimony of Toichi Tomikawa)

Los Angeles, California, Tuesday, May 24, 1932.

4:45 o'clock P. M.

TOICHI TOMIKAWA,

recalled as a witness on behalf of the claimant, having been heretofore duly sworn, testified as follows:

DIRECT EXAMINATION

In answer to MR. SCHLEIMER:

The coast was about two miles before the revenue cutter turned towards Pedro, when we approached point San Juan. I think they turned to San Pedro, their course. About 7 o'clock. The revenue cutter reach San Pedro Lighthouse about 12 o'clock that night, midnight. The revenue cutter reach the Base at San Pedro about 1 o'clock in the morning. I am the owner of the "Patricia". About the 17th, between the 15th or 17th of March, this year. I am not a citizen of the United States.

In answer to THE COURT: I was born in Japan.

In answer to MR. SCHLEIMER: I did not have that vessel "Patricia" registered or enrolled with the Customs House in the United States.

MR. SCHLEIMER: You may cross examine.

CROSS EXAMINATION

In answer to MR. CHICHESTER:

I recall the chart that we had here yesterday and to certain lines that were drawn on it. I remember the letters A, B, C, D, and so on. It was about 2:30 in the afternoon of March 23rd when the Coast Guard boat

(Testimony of Toichi Tomikawa)

came alongside my boat. At the time, about 1 o'clock on that day, we could not see so far distant because it was hazy. Before 1 o'clock it was hazy on that day and I could not see very, very far distant, but after that time we can see more and clear. It was not quite clear after 1 o'clock. About 2:30 we look many thousand feet, high place, we can see about 25 or 30 miles. When we see from this side (indicating) there is many places. We can see the top of the mountains on Catalina Island. I could see the tops, more than one top, but the highest. I was looking at Catalina Island from the point marked "A". I saw a number of peaks on Catalina Island. One of them appeared to be higher than the others. I took that peak to be Peak "B". The height of this Catalina Island is about 2000 feet and not so many, so when you look from San Pedro, looking from "A" point, about the center—this is the center of the Island (indicating). I can tell if that is the center of the Island when I am at a distance of 25 or 30 miles. I was working on this sea more than 15 years and by this experience I can judge about. You do not understand. Haze sometimes lays up high, but sometimes very low. On that day, in the morning by 1 o'clock in the afternoon, before 1 o'clock, this haze covered the high places, but about 1 o'clock, the haze was cleared up.

In answer to THE COURT: At 1 o'clock the haze has cleared up on the high places.

In answer to MR. CHICHESTER: I have not been at Santiago point. I have not been on top of there. This is the highest point on this chart (indicating), about this direction (indicating), so while we are navi-

(Testimony of Toichi Tomikawa)

gating we must remember about this point. I stated that the distance from "A", marked on the chart, to the point "E", which is San Juan point, is a distance of 19 miles, or it is my understanding from this chart that at the time I was boarded I was 19 miles from San Juan point. It was about 2:30 in the afternoon of March 23rd when the Coast Guard boarded my vessel; might be about 5 or 7 minutes. It was after 2:30 in the afternoon, about 6 or 7 minutes. The Coast Guard came alongside Patricia and came aboard my boat about 2:40. It took about 20 minutes when we got on the deck of the Coast Guard. They started towing in this direction (indicating). I think it was northeast, north about, I suppose. I said yesterday that they started to tow the Patricia east northeast. Then they changed their course down this way (indicating on chart), and then this way (indicating) and this way (indicating). They changed the direction many, many times, so I cannot explain exactly but I can say about. Then turn about 7 or 10 degrees difference to those, I suppose on the compass. I stated I saw San Juan point. It was this side (gesticulating), the starboard side. I stated on direct examination that we were 2 miles away from the point, approximately. I stated on direct examination that an "Admiral Line" vessel crossed the bow of the Coast Guard vessel. It came from my left side. I suppose it came from San Pedro to San Diego. When I saw the vessel of the Admiral Line she was about thirteen and a half miles from the shore. I stated that from my experience as a seaman of over 15 years. I judged the speed of the Coast Guard boat and the Patricia in

(Testimony of Toichi Tomikawa)

tow to be about 6 or 7 miles an hour. It was about 4 o'clock in the afternoon when I saw the Admiral Liner. It was about 3:20 or 3:30 when they put a line from my boat on to the Coast Guard boat. That was about 19 miles out. From 3:30 until 7 o'clock, is three and a half hours. We were traveling at between 6 and 7 miles an hour. We laying at point "A". It takes nearly one hour. Until the tow started, one hour. Boat or anything don't stay at one spot; current and breeze and wind will carry it along; that makes a difference in your figure. Some time it make a difference of over a mile. If it is a pretty high wind. If Coast Guard runs 7 miles an hour, three hours and a half would be about 25 miles. If Coast Guard runs 6 miles, that would be about 21 miles. This Coast Guard did not take direct course, but changed course all the time; that will make distance longer. I do not know how many miles. But from this point to this point (indicating)—by this point to this point (indicating), shortest line, and if we come this way it must be longer than the shortest line. From 3:30 until 4:00 we must have traveled around about 4 miles. I know it was 7 o'clock when we came off point San Juan. I set my boat time at sunset, my clock on the boat at sunset; it was 6:20. I set my clock with sunset. I guess at the time when I set my clock. It is about right. It is a pretty close guess. About 2 o'clock in the afternoon of March 23rd I was watching the movement of the boat in the pilot house. I was in the pilot house. I watching in the same place. Hirata standing by me. Frank Oraeb was sleeping in the bunk. Then, I suppose, "A" gave the position where it is—if the

(Testimony of Toichi Tomikawa)

boat move—if we stay on the one place, we can see one direction; we cannot see where it is; we know only direction, but even if I move the boat some distance, then we can know where we are; then we can get the position of the boat. The direction my boat was moving in we went between two points. This way straight (indicating on chart); that is north and southeast. The bow headed northwest, the stern southeast, proceeding at 7 miles an hour at about 2 o'clock on March 23rd. I went to start the engine, start the running, about 1 o'clock. 1 o'clock, and if I run about an hour and a half it must be about 10 miles, and if I move the 10 miles with southern direction, then I can understand on chart where this boat is. At 2:30 I was in the pilot house. I first saw the Coast Guard boat on the starboard side. It was just 2:30. 2:30 was the time I found out the place, so it is sure. I look at the clock then. The reason I took position and make a notation, as I said before, it was hazy and I take a chance to look at some certain point to get the position; if the evening come—if the haze come you cannot see very well.

MR. CHICHESTER: That is all.

REDIRECT EXAMINATION

In answer to MR. SCHLEIMER:

I said that I was in the pilot house about 2:30. Before I was in the pilot house I was at the table in the cabin. I opened the map and indicated the position. I did not start the engine about one o'clock. I started the start.

(Testimony of Toichi Tomikawa)

Q Was the boat running up to one o'clock, or was it not?

A What is it, please, once more? Before one o'clock we were drifting. About one day and night. A day and night—22 or 24 hours. We were drifting between Ocean-side and Clemente and Catalina. I figured this way (indicating), around this course this way, southeast (indicating). This way, please (indicating). This is "A"; that is where we were at 2:30 on March 23, 1932. The other point is here, about (indicating). At this place I found out, at 1 o'clock, one twenty south, and the last twenty-four hours may be moving about this direction (indicating). I think, might be moving between 7 or 10 miles. It must be from this way, southeast (indicating). From San Pedro towards the ocean, towards San Diego.

MR. SCHLEIMER: I believe that is all.

RE-CROSS EXAMINATION

In answer to MR. CHICHESTER:

I did not have any flag on the Patricia at any time on March 23, 1932; we were not flying any flag of any nation. The deviation of my compass on the Patricia on March 23rd maybe one more or less difference. Cannot say what is exactly. I believe it is the same as the chart. I do not know how long before had it been tested because I owned that boat not a long time. Just a short time. So I do not know when that compass was tested. I figure some deviation when I was taking bearings on this chart, but I trusted the compass. And did not allow for any deviation.

(Testimony of Shinajiro Hirata)

MR. CHICHESTER: That is all.

MR. SCHLEIMER: That is all.

THE COURT: We will have to continue this matter. We suggest that the hearing in this libel here be resumed on Thursday, May 26th, at 10 o'clock.

The further proceedings in the case of the United States versus American Oil Screw "Patricia" will be continued until Thursday morning at 10 o'clock. All witnesses will return here without further notice.

Los Angeles, California, Thursday, May 26, 1932.

10:00 o'clock A. M.

SHINAJIRO HIRATA,

called as a witness on behalf of the claimant, being first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

In answer to MR. SCHLEIMER:

I was born in Japan. I am not a citizen of the United States. I am a citizen of the Japanese Empire. My business is seaman. I have been a seaman about 16 or 17 years. During the 16 years that I have been a seaman I have been a seaman in this country off the coast of California.

THE COURT: Q Well, you mean you have worked as a seaman for 16 years off the California coast?

A Not always, but I worked about 16 years this coast.

Q You have worked along this coast for about 16 years?

A Yes.

(Testimony of Shinajiro Hirata)

THE COURT: The answer is yes?

A Yes, sir.

MR. SCHLEIMER: Q You mean steady or on and off??

A I can't get it.

Q You mean steady, or on and off of this coast?

A Oh, you mean—no, not always steady.

THE COURT: Q Well, what other coast have you worked on?

A Well, that is California coast near and around San Pedro.

THE COURT: I guess that is sufficient. Let's go ahead.

In answer to MR. SCHLEIMER: I recall March 23, 1932. I was on Patricia that afternoon. I just was standing by pilot house and steering once in a while. I just once in a while, you know, just steer. Steering the boat. I remember when the Coast Guard Boat 259 came alongside of the Patricia. It was coming alongside at 2:30 in the afternoon. Mr. Toichi Tomikawa was in the pilot house the same, standing beside where I was. Well, he was in the cabin, and come back to the pilot house. The cabin from the pilot house is just one partition there, and only about 5 or 6 feet further he was. He was in the cabin, he took chart and put it on the table where we were eating, and he used an instrument to measure something. I saw him—he take chart, I mean he take a chart and put it on the table and he used instrument and measuring and he tried to get position of where Patricia was. Well, he looking, he looked at the compass and he just get the direction with that, Catalina Mountain, what direction

(Testimony of Shinajiro Hirata)

he was looking first. And he looking on starboard side, you know, further out the mountain, Santiago Peak, the largest points, and just the same thing he do to the Catalina Island.

Q BY THE COURT: What was the other peak?

A Santiago Peak; I don't know exactly the pronunciation.

THE COURT: All right.

In answer to MR. SCHLEIMER: He went in the cabin. When Mr. Tomikawa had done the things that I have described, at that time, 2:30, Patricia was 24 miles from Catalina and 19 miles from San Juan Point. It is direct from Patricia, compass point northeast Santiago Peak and west one-quarter point north Catalina Mountain. I was in the pilot house at the time that the Coast Guard boat came alongside of the Patricia. One person came on the boat. This gentleman asked who saw the little boat floating— This man working on Coast Guard boat. I didn't know him. The man from the Coast Guard that came on board said that to me. Of course, I didn't see—I never say anything.

THE COURT: Now, one minute. What did this man from the Coast Guard boat ask you?

A Little boat, seen any little boat around here maybe wrecking?

Q Leaking?

A No, break down.

THE COURT: Break down, all right.

In answer to MR. SCHLEIMER: I see after captain of the Coast Guard 259 come on board, after that I don't remember exactly how many people, maybe 2 or 3 or

(Testimony of Shinajiro Hirata)

more; I don't remember. Frank Oreb was at the time in bunk, what do you call place for sleeping. When they came on board from the Coast Guard arrested. Before the Coast Guard people arrested me captain just jumped in the boat and ran back and call 259 Coast Guard boat; it come alongside Patricia, and at same time he hold the gun and I was arrested. I saw the Coast Guard people that went on board go in the cabin. I am outside; I don't see after they get in, but he saw Frank Oreb and maybe saw them in the cabin, but I don't know *exactly*. I was outside of the cabin. The Coast Guard people order me, Mr. Tomikawa and Frank Oreb to go on board of the Coast Guard boat. All three of us went on board of the Coast Guard boat. They place me on back at the end. There was a man standing there watching me. Mr. Tomikawa was placed behind the cabin, about the center of the boat.

Q Was there also a guard placed there to watch him?

THE COURT: Well, why go into those details? There isn't any doubt about the fact that the Coast Guard cutter seized this boat Patricia and placed the witness and the owner of the boat and Mr. Oreb on board the cutter and brought them into port. Now, let's omit those details about which there is no issue.

MR. SCHLEIMER: All right, your Honor.

In answer to MR. SCHLEIMER: They tied the Patricia to the Coast Guard boat. It took them about 10 or 15 minutes. The Coast Guard boat started to proceed in direction of shore, these people not taking same course. I remember they changing many, many courses, you know, but Coast Guard, I suppose they were close to shore any-

(Testimony of Shinajiro Hirata)

way. We got there about 7 o'clock. They proceeded in direction northeast by east, and then change northeast and northeast by north, and north northeast and north-northeast, north; after end of time I saw that the boat was clean around and headed north once, headed north by west, and I saw the San Juan point was about 2 miles out at that time. I watch this point but I don't know exactly how many hours they keep the same course. The Coast Guard boat was about 2 miles from San Juan about 7 o'clock. I saw a steamship while I was on board the Coast Guard boat. She passed the bow of the Coast Guard boat about 2 mile away. I mean steamship passed coast guard bow about 2 miles away. It was a little after 4, or 4 o'clock. After reaching San Juan, direction San Pedro, the Coast Guard boat arrived at the Lighthouse at San Pedro 12 o'clock midnight. The Coast Guard proceeded after that to Coast Guard Base; reached there 1 point of San Juan Point. We are outside the steamship, passing by, or passing the bow of the Coast Guard boat, that steamship was between the Coast Guard boat and the point of San Juan Point. We are outside the steamship, and steamship between San Juan and Coast Guard boat. I saw the color of the paint on that steamship. It was black color. She had two masts. The color of the masts was something like bright color, but I didn't see; didn't see. Something like very light color. She had one funnel. I saw on that funnel something like a big ring that only the Admiral Line mark have on chimney and a round ring. It was Watson. I know it was the Watson. One boat pass for San Diego. I find after 3 or 4 days this is surely the Watson, see by the paper.

MR. SCHLEIMER: You may cross examine.

(Testimony of Shinajiro Hirata)

CROSS EXAMINATION

In answer to MR. CHICHESTER: I looked in the newspaper and checked up on that I saw on the funnel. Just look like, come little higher than chimney face, what do you call it? I see face and those things show like that, and higher spot like a ring around. I cannot say the color of that right, but very bright; it's too far away for this ring, all I could see was the ring; I couldn't see any color or anything of that sort. I know it was an Admiral Line vessel. This is very easy to me, but very hard to explain all about. Excuse me, please, but I know masts, I can tell if there was Dollar Line or was fishing boat, or was Yale or Harvard, or was City of Los Angeles; only my experience. I cannot say like Packard or Studebaker, or just what it is; I cannot explain. The Admiral Line insignia bears the flag on the funnel, or carry a flag on it. I did not see the flag. I did not see any flag.

THE COURT: Let's mark this drawing.

MR. CHICHESTER: Yes, we will offer that in evidence as an explanation of the witness's testimony. As Government exhibit—

THE COURT: Government exhibit 1.

In answer to MR. CHICHESTER: I stated I had been going to sea for 16 or 17 years; not straight; approximately that time. I did not have any financial interest in the Patricia; not any. I work shares, after we get fish. I work on shares of the fish we catch. We were not fishing this day. I say it was about 2:30 in the afternoon when the Coast Guard vessel came alongside of the

(Testimony of Shinajiro Hirata)

boat. There was a clock on board the vessel. It was in the cabin. I was in the pilot house. I could see the clock through the open door clear. Mr. Tomikawa, at 2:30 in afternoon, was in cabin and come back to the pilot house and stood at the side. Stood at my side in the pilot house. He was in the cabin and at the time the Coast Guard come, he come back to the pilot house. I stated he had a chart on the table and was taking a position, just before 2:30. That was just a few minutes before 2:30. We had three compasses, that was one in pilot house, and one on roof of the pilot house, and one somewhere in the cabin. It is used for something just to bring it out on the deck. This time I don't remember where they keep it. It's a movable one. You can move it around anywhere. It was some place in the cabin. I saw Patricia compass direct Catalina Mountain west one quarter north. I was just watching him. I was steering the boat, but he doing that, and besides I know just about where I am at; I knew where I was. I knew where we were. Mr. Tomikawa said, we are about same position yesterday about this time. He said it was about the same place as we were yesterday at that time, is what he said. I said uh-huh. I said uh-huh, that means just give an answer. We kept a log on that vessel. I did not make any notations on the log at that time. Mr. Tomikawa did not make any notations in the log at that time. I did not make any notations in the log the day before when we were in that same position.

Q No notations were made in the log at any time concerning the position of that vessel. Isn't that correct?

A I can't understand you.

(Testimony of Shinajiro Hirata)

No notations were made in the ship's log concerning the position in the water at any time. Mr. Tomikawa just uses the chart, and he get the position. I see something he wrote down, and at the same time he told me where we were, and my mind just decide that so I give the answer. Nothing was put in the log. The log is now on the Patricia. It's on the boat now. When the Coast Guardsmen came on the boat, the first thing asked was, "Did you see a little boat floating or wrecking?". I said I didn't see anything.

Q What else did he say?

A He asked the number of the boat.

I give him the number, 970-A. He wanted to see— what do you call the registration papers? The papers of the vessel. He did not ask me for a manifest. He didn't ask for that. He asked for my papers. I told him I didn't have any. Then he said, "Thank you," and goes out of cabin. He walked out on the deck and walked toward the back end of the ship. It looked like he call the 259. And 259 came to the Patricia and just comes close like this, and gets alongside the Patricia, but behind it. I think this gentleman, the captain, he jump into the Patricia and he open the hatch and lifted it back, then called 259, because 259 drift about 200 feet, you know, and big ocean there, it come alongside the Patricia. Then they had us arrested. The captain of the Coast Guard vessel said, "You have whisky". I said, "Yes."

THE COURT: Now, one moment, we are having difficulty in getting some of the answers of this man.

MR. CHICHESTER: I beg your Honor's pardon.

(Testimony of Shinajiro Hirata)

THE COURT: Speak up a little louder, please. Mr. Reporter, will you read the last four questions and answers?

(Last four questions and answers read.)

In answer to MR. CHICHESTER: It took the Coast Guard boat, to tie up to the Patricia and start towing, about 20 minutes. Just proceeded to shore, but I can't say just the point, but many points. He take course too many points. I guess average, that is towing time, they average—they change speed two, three or four times, first faster, then slower, then faster, oh, I believe 6 miles. He asking the engineer, and I hear him answer two or three times different. The captain ask the engineer how many number like this, then engineer say 500, 400, 600. I am referring to revolutions per minute. I think so. I was away back in end of boat, on the port side, on the Coast Guard boat. When the Coast Guard boat first came alongside the boat that I was on, the captain of the Coast Guard boat called to me and asked me what I had aboard I answered that I had a load of abalones.

MR. CHICHESTER: I believe that's all, your Honor.

REDIRECT EXAMINATION

In answer to MR. SCHLEIMER: When the Coast Guard boat started to tow the Patricia, they were steering just near the place I sit down, from the back, big ladder, to keep boat straight, and there is a big post, not big post, but just this much post come out on deck. It is called among seamen emergency steering. It was not steered from the wheel house; just used on the outside steering things from the cabin; it's cable break somewhere. I mean that the steering cable broke or was broken at that time. The

(Testimony of Shinajiro Hirata)

cable connection in the pilot house. That is the reason they were steering from the back of the boat. I don't know exactly how many hours.

MR. SCHLEIMER: That's all, Mr. Hirata.

MR. CHICHESTER: Just one moment please, one question.

RE CROSS EXAMINATION

In answer to MR. CHICHESTER: I don't remember the first man that boarded the vessel, Mr. Blondin asked me where the captain was, and I don't remember telling him that the captain was in Turtle Bay. At the time I was aboard the Coast Guard vessel and they started towing the Patricia, I was on the outside of the pilot house on the Coast Guard vessel in the port quarter, the upper end of the boat. I could not see from where I was on the Coast Guard boat the instrument that recorded the speed of the motor of the Coast Guard boat.

MR. CHICHESTER: That's all.

REDIRECT EXAMINATION

In answer to MR. SCHLEIMER: I remained in the back of the Coast Guard boat about 3 hours, I guess, since I was on the boat until we got to San Juan point, and just 15 minutes I was inside to eat and I come out, you know, but always I sit in just the same position. After 7 o'clock I sit inside the boat where they are eating. I was there 7 o'clock to 1 o'clock.

MR. SCHLEIMER: That's all.

MR. CHICHESTER: That's all.

MR. SCHLEIMER: Step down please.

Mr. Beckwith.

(Testimony of W. N. Beckwith)

W. N. BECKWITH,

called as a witness on behalf of the Claimant, being first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

In answer to MR. SCHLEIMER: I reside at San Pedro. I am shipmaster. Have been such 22 years. I am a licensed shipmaster. I have also been in the Navy. Lieutenant-Commander Confirmed in the Navy. I was also commanding officer of various vessels during the War over-seas. I have traveled on the coast from San Pedro toward San Diego. I am a pilot for that district. For a great number of times in the past 22 years. I know the Admiral Line. The color of their boats is black, yellow funnels and yellow masts. They have an insignia on the funnel; the flag painted on the funnel in a circle. They have the flag painted on the funnel in a circle on either side. I know the course that line takes proceeding from San Pedro lighthouse toward San Diego. The course they take is about southeast, three-quarters east. I am familiar with the point of San Juan. There are a few outstanding rocks there. Any steamship line goes from San Pedro to San Diego, and vice versa, leaving closely from the break-water, the light at the break-water at San Pedro and proceed to the sea buoy which is about 2 miles southwest of Point Loma off San Diego; between the sea buoy and Point Loma is a kelp bed which is dangerous for navigation. That course from there is 322 degrees from San Diego to San Pedro. I use the points. That is a very crude way. In navigation they use degrees, not points, and vice versa, that would be 322 minus 180 would be 142, I believe; that would be the true

(Testimony of W. N. Beckwith)

course from San Pedro break-water to San Diego and the sea buoy, which is followed by all vessels that are safely navigated. Any course inside of that would be dangerous for the navigation of the vessel. If the vessel went a few degrees inside that course that would take her much closer, and she would fetch up land before she came to San Diego. Point Loma is the most outstanding point there, and the course—that is only about an 80 mile run—all vessels leaving San Pedro make the direct course to San Diego, and that is the course I gave you before. That takes the vessel over 12 miles off Point San Juan and about 14 miles off San Mateo rocks. The coast goes in there a little more and then it works out as it approaches Point Loma. Therefore, navigators are very careful to keep off that course, and they go outside the kelp beds this side of Point Loma, and it's the shorter road. It is known to be a fact among shipmasters, to take a direct line from the San Pedro light-house to the point I described, except in foggy weather they sometimes go a little further off shore for safety. They would not go further in toward land. That would increase their distance, and it would be dangerous for navigation. It would be dangerous because there are the rocks, and you would fetch up the land. They must go on that outside course, in that line. It is most direct.

THE COURT: Q. Now, you speak of boats going from, traveling from San Diego to San Pedro, they first head for the buoy that is about 2 miles off Point Loma?

A Yes, that is the sea buoy.

Q Called the sea buoy?

A Yes.

(Testimony of W. N. Beckwith)

Q And then from that point, what is the direction taken by the boat as it proceeds towards San Pedro?

A 322 degrees, sir, one course direct, about 80 miles.

Q And that course would carry the boat, you say, about 14 miles off of what place?

A That would take the boat about 14 miles off San Mateo rocks.

Q About 14 miles off San Mateo rocks?

A Yes, and about 12 miles off San Juan, 12 and a half miles off San Juan.

Q And are the San Mateo rocks further south than Point San Juan?

A Further east and south.

Q Southeast, and with respect to other portions of the shore, are there places where the boat, the steamer would be less than 12 miles from shore?

A Not until she was very near Point Loma, and also very near San Pedro.

Q In other words, between Point Loma and San Juan point, this course is always at least 12 miles off shore?

A Yes, sir.

Q And from Point San Juan to the San Pedro lighthouse does the course gradually get closer to the shore?

A Yes, sir, yes, sir; not immediately. San Juan point projects out like a point you see, and then there is a small waver in the shore, a slight bay indentation of the coast line, and then gradually it comes out.

(Testimony of W. N. Beckwith)

THE COURT: Mr. Clerk, will you hand the witness the map?

MR. SCHLEIMER: If I may interrupt the Court, the witness has his own map, and has the diagram that he could easily explain to the Court; the course, he has it all laid out here.

THE COURT: Well, all right; let him use his own map.

MR. SCHLEIMER: Q Is this the same map as is marked "Claimant's exhibit A for identification"?

(Witness examines map.)

A 5102 in the corner, the same thing, yes, sir.

MR. SCHLEIMER: Your Honor, this the same map, the witness states.

THE WITNESS: This is the sea buoy at San Diego. This is kelp in here, and this is Point Loma. This is 322 degrees to San Pedro break-water. That is the break-water lying right close to it. This distance here is twelve and a half miles from Point San Juan to here.

THE COURT: Q That is, to the steamer line?

THE WITNESS: To the steamer line, that is the course line; you see, you asked about the course, and this is a little further out than it is here, but it comes in. It goes further in there and works out here. It would be dangerous—

Q Now, when the steamer is about opposite Balboa, what is the approximate distance off shore?

(Testimony of W. N. Beckwith)

A Balboa? You mean up here; ten and a half miles at Balboa. (Witness measuring on map.)

Q And between Balboa and the break-water there are places where the boat gets even closer to shore than ten and a half miles?

A Well, I will take Long Beach, Seal Beach 7 miles.

MR. CHICHESTER: Q How many?

A 7 miles at Seal Beach.

THE COURT: Had you concluded with the direct examination?

MR. SCHLEIMER: I have a few more questions, your Honor.

THE COURT: Well then, perhaps we had better resume the interrogation after the noon recess. May we inquire how many more witnesses you have?

MR. SCHLEIMER: I intend resting after this witness. I have another witness, but he will be cumulative, and I think we have covered it sufficiently. He is in court.

THE COURT: Does the Government expect to present its case within the period of the afternoon session?

MR. CHICHESTER: Oh, easily, I think, your Honor, unless the cross examination is extremely lengthy. I think we can put our case on in half an hour or 45 minutes at least.

THE COURT: Yes; take a recess at this time.

(Recess at 12:05 P. M. to 2:00 o'clock P. M., same day.)

(Testimony of W. N. Beckwith)

Los Angeles, California, Thursday, May 26, 1932,
2:00 o'clock P. M.

W. N. BECKWITH,

resumes the stand for further direct examination, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION (Continued)

In answer to MR. SCHLEIMER:

I am also a master and hold a certificate as shipmaster unlimited. I had such a certificate 21 years.

MR. SCHLEIMER: You may cross examine.

MR. CHICHESTER: No cross examination.

MR. SCHLEIMER: That is all, sir.

MR. SCHLEIMER: May it please the Court, I have here Mr. Frank Oreb, who was one of the crew of this vessel in question. His testimony will be to the effect, the same as the first two witnesses as to what transpired at the time the boat was seized; in effect it will be cumulative, corroborating the other witnesses. In the interest of time I believe I can rest now, unless your Honor cares to hear him.

THE COURT: That is the man who was asleep in the bunk when the cutter was seized?

MR. SCHLEIMER: Yes, your Honor.

THE COURT: He is not a seafaring man? Is he a man of any seafaring experience?

MR. SCHLEIMER: He has been in the fishing business for some time. So far as this case is concerned he will practically corroborate the other two witnesses and I thought in the interest of time—perhaps if your Honor cares not to hear from him—I would be willing to rest.

(Testimony of Frederick J. Dwight)

THE COURT: Well, the Court is not suggesting whether any witness should be called.

MR. SCHLEIMER: I understand that, but his testimony will be just what happened after the Coast Guard vessel arrived, so we rest.

MR. CHICHESTER: Are you resting?

MR. SCHLEIMER: Yes.

FREDERICK J. DWIGHT,

called as a witness on behalf of the Government, being first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

In answer to MR. CHICHESTER:

I am Chief boatswain's mate, United States Coast Guard. I was officer in charge, CG-259 on March 23, 1932. 2 o'clock in the afternoon I was on the course 51 P. S. C. That means compass course from northwest Harbor San Clemente Island.

At 11:15 on the 23rd day of March, I laid my course well clear of northwest Harbor San Clemente Island; the course 68 true or 51 P. S. C. en route, latitude 33 degrees 16 minutes north, longitude 117 degrees 55 minutes west, in search of a reported capsized boat.

THE COURT: One moment. Mr. Reporter, will you read what you have there?

(Answer read.)

THE COURT: What do you mean by "course 68"?

A In laying the course, your Honor, you lay your course on the chart; you move your parallel rules to the center, compass rules, on that compass rule you have a

(Testimony of Frederick J. Dwight)

true course and you have a magnetic course, but before coming to the compass course or P. S. C. you must look up your variation or deviation on the compass.

In answer to MR. CHICHESTER: The reason for having to look up variation or deviation you have local deviation aboard ship that doesn't prove true. All magnetic compasses unless they are corrected very often, which can be done by an expert compass adjuster. In Government service they are corrected every six months. It all depends on how much repair work or shifting of metal or steel or anything that takes place on the vessel during that six months. It amounts to as much as 3 or 4 degrees. If there is anything like steel work or metal work going on around the ship. I laid clear of Northwest Harbor where the X mark is here, I laid my course—Laid my parallel rules, got my latitude and longitude at this point—I then brought my parallel rules to the center of my compass, rules which give me a true course of 68 degrees, noting that the variation is 15 degrees east and 15 minutes with the annual increase of 1 minute. I have been customary here to use 16 degrees variation, so, therefore, subtracting 16 degrees variation from my true course, giving me a magnetic course of 51 magnetic, having 1 degree easily variation which gave me 51 P. S. C. At the time of departing the revolution of my vessel was 700 revolutions per minute on both engines. That was recorded on the dynamometer in the engine room. The engineer on watch could see that. I proceeded from the point marked X on the chart at 11:15 in the morning. And I arrived at Point C on the chart at approximately 2:45. I hadn't calculated the distance because I figured the boat was reported here 24 hours later to me and due

(Testimony of Frederick J. Dwight)

to the sea conditions that would work in 5 miles or five and a half miles more to the D position. I made a 5 mile search for the capsized boat. I didn't calculate the distance from X to C. I refer to 11:15 A. M., March 23rd. That was the day on which we overtook the Patricia at point X. At point X, I received radio instructions at 10:45 in the morning from Base 17 to proceed to this position to search for this capsized boat that was reported by the steamer the night before. After I arrived at point C, I continued on in towards the coast. On the same course. The speed of my motors was 700 revolutions. Point D indicates where the Patricia was boarded and seized at 3:15 on the 23rd day of March. In the afternoon. By dead reckoning position from point X; 4 hours run at 10 and a half miles or 10 and a half knots would give me 42 miles from point X to point D. When I arrived at point D, I noticed the American Gas Screw Patricia. That's an oil screw. She was headed to the northwest, and I proceeded to her stern very close, and as I swung to come up to the Patricia starboard side I blew three whistles from my klaxon for the Patricia to stop for inspection, that evidently were not heard, and I then came alongside the Patricia and I motioned to two men in the pilot house and asked them why they didn't stop. The Patricia was well loaded, way in the water. Deep in the water, and I asked one of the men what his cargo was, and he told me he had a cargo of abalones.

I can't recall by name, but one of the witnesses, the short, heavy-set fellow,—Mr. Hirata. Then I placed Blondin aboard. He was seaman first class. He was standing watch with me aboard, placed him aboard the Patricia and Blondin reports to me that they have no

(Testimony of Frederick J. Dwight)

papers and that the *capitan* was left at Turtle Bay. Not satisfied with this information, my boatswain's mate was called, and I myself went aboard the *Patricia*. I lifted up the main hatch and found out that the main hatch was loaded with sacked liquor. Patrol Boat 259 was approximately 300 or 350 feet to the stern of the *Patricia*. I motioned to my boatswain's mate to come alongside. I then told this little fellow here—Mr. Hirata to shut off the main engine. This was done, and I searched him and searched the other men and the man known to me as Nick Baritich. He is in the court room. The man with his hand on his mouth.

THE COURT: Well, will Mr. Oreb stand up?

(Man in rear of court room arises.)

THE COURT: Is that the man to whom you refer?

A That's the man, sir.

THE COURT: Very well.

THE WITNESS: He was asleep in his bunk. After searching the three men, I placed them aboard the patrol boat, one man forward, one man amid ships, and one man aft. I then placed the tow line on board the *Patricia*, about 350 feet of tow line, at which time we brought our starboard wheel—

THE COURT: On the 259?

A Yes, which made it kind of difficult to have headway on the *Patricia*, and no headway at that time the *Patricia* overran the tow line, so I ordered my men to cast off the tow line, which they did, and that shifted the tiller which is an emergency for steering aft, and we made a complete circle and came back alongside the *Patricia* on her port side. I then went aboard the patrol boat and placed Edward Anklo and Kuseno—two of my

(Testimony of Frederick J. Dwight)

men aboard the Patricia. The tow line was again made fast, and we resumed that towing with the emergency rudder or emergency tiller. Then I laid a course from point D to San Pedro break-water. My supposed position at point D. I then laid my course along this line to San Pedro break-water light. (Mark that point Y?) Which was 317 true or 300 per standard compass. For the first two hours I was making various speeds. I can refer to my log on that. From 4 o'clock I made 3.7. That is 3 to 4, I made 3.7; from 4 to 5, I made 2 miles, and from 5 o'clock on until midnight I made 4½ miles per hour. I arrived at the point marked Y at 2400 midnight, March 23rd. Figuring my dead reckoning position, it was just the position from X to D, and from D to Y; I figured that I was 10 miles from San Juan point, 204 degrees true, when I encountered the Patricia. I have a note of that here. I have it made in my report to Washington. This memorandum doesn't give it from San Juan point, but from the San Mateo rock. The nearest point of land is San Juan point. San Mateo rock was ten and a half miles southeast true from San Juan point. This position was by dead reckoning running from San Clemente Island. I mean from the run I had already made from the point at the Patricia to point X. I had no objects due to hazy weather, and visability was very poor. I couldn't see any land marks whatsoever to determine the exact position. That is the reason I took no bearings with reference to land marks, because I could see no land marks to take position from. Seven, which is, objects not visible at 7 miles. I have a record of that in my log. The visibility was 7 at the time I contacted the Patricia at point D. That was about 3:15. We didn't

(Testimony of Frederick J. Dwight)

lose 10 minutes in getting under way, but due to the wheel rope and waste of time, we did not get under way much before 1700, or 5 o'clock. From 3:15 to 5 o'clock I made approximately 10 miles, I believe. I'll withdraw that; I should have said 5 miles. From 3:15 to 5 o'clock I proceeded 5.7. I didn't vary more than 2 degrees from a straight course due to heavy tow. I was able to keep my course within 2 degrees of it. I heard the testimony of the witnesses, Mr. Tomikawa and Mr. Hirata, with reference to my laying a course towards Point San Juan and coming within a distance of 2 miles at that point, and then proceeding towards San Pedro. I did not, no, sir. I have a record in my log of the course I took. My testimony now is based upon the record in the log. That's an official record, of which I have a copy and Washington has a copy, and one copy remains at the Base. Assuming that the point of contract with the Patricia was made as contended for by the claimant at the place on their chart which is marked A, and keeping in mind the course which I laid shown by my record in the log, the Coast Guard boat, together with the Patricia, would have arrived at 12 o'clock midnight of March 23rd clear out here in the center of San Pedro Channel. According to the course that I laid, I arrived at the point toward which I had laid that course. I come into the Base as shown by my log at 0020 or 20 minutes after 12 on March 24th, I moored to Section Base 17. At the time I contacted the Patricia and came alongside, she had absolutely no fishing gear whatsoever. She was down low in the water, I stated. I did not see any liner of the Admiral Line at the time I was proceeding from Point D to Point Y on my chart. I had Seaman First Class Blondin, Boatswain Second

(Testimony of Frederick J. Dwight)

Class Zaitzeff, and I had Motor Mechanic Van Dusen, and I had a ship's cook, (spelling) P-r-e-t-z, I believe it is spelled, and myself. At the time that I boarded the Patricia, I did not make any request or demand of the members on board the vessel for papers or documents. Seaman First Class Blondin did. Such papers were not produced, except two yellow slips which I believe are freight tags which were turned over to the Customs. A tonnage tag. No manifest, no registration or enrollment. The vessel was not flying any flag. She had "Patricia" on her bow, and number 970-A. It had a number, and the word "Patricia". On the stern it had the home port "Los Angeles," but very faint. This line here, X to D, was made at 11:15 on the chart on March 23rd. From D to Y was made at approximately 3:25 on March 23rd, in the afternoon. I layed out these lines on the chart. My boatswain's mate was present. He is Zaitzeff. He is present in court now.

MR. CHICHESTER: You may cross examine.

THE CLERK: Do you wish to number that exhibit?
(question addressed by the clerk to the Court.)

THE COURT: Yes, let the record show that the chart which the witness has been examining last, and which contains those lines and letters, will be marked Government exhibit 2.

MR. CHICHESTER: We offer that chart in evidence, your Honor.

THE COURT: So received.

MR. SCHLEIMER: While we are at this point, may I ask that the chart I offered be also considered in evidence. It was marked merely for identification.

(Testimony of Frederick J. Dwight)

THE COURT: Yes, it will be received in evidence as claimant's exhibit A.

MR. CHICHESTER: To which we object on the ground no proper foundation has been laid, as it was shown by the testimony of the witnesses who referred to it that it was made long after the seizure and the happening of the events.

THE COURT: Well, the Court is receiving it merely for the purpose of illustrating the testimony, and for no other purpose.

MR. CHICHESTER: Very well.

CROSS EXAMINATION

In answer to MR. SCHLEIMER: I am not a licensed pilot. I am not a licensed master. In fact, I do not hold any license whatsoever in navigation. It is not required in the Government service. I use a chart of this kind here when working in this locality. At point X I was instructed in a message to proceed to a certain point. That was in the form of a wireless message. That was written up. That message is on file at Section Base 17. I believe there are no copies of that elsewhere. I believe there is record on my boat of that message. In the regular radio blank form that is used by the United States Coast Guard. I received that message at 10:45 in the morning on March 23rd. I proceeded in that direction in half an hour at a speed of 700 revolutions per minute, both engines. It was hazy at that time. It was above the water. So that no kind of objects could be seen in that locality at a greater distance than 7 miles. I could not estimate how high the haze was above the water. When I first observed the Patricia she was

(Testimony of Frederick J. Dwight)

I should judge, a mile and a half. The weather was so clear that I could see a mile and a half from my boat. The haze did not disappear at that time. It was still hazy. The Patricia was I should judge a mile and a half southeast of Point D when I first noticed her. She was coming on this course up the coast, northwest course. From the point Marked E to the point of San Juan, the distance was 10 miles. When I first observed the Patricia she was not about 12 miles from Point San Juan. I know it, because she wasn't coming in; she was off shore. She was coming out from a straight course. I observed that from a mile away, because I crossed her stern. When I got alongside the Patricia I instructed one of my men to go on board. I remained on my boat. He talked to me. I could hear him. I came on board when I was properly relieved. In about 3 minutes. The first man that got on board remained there until I arrived there. I did not speak to Mr. Hirata until after he was aboard the 259, not before. No more than telling him I was going to search him for weapons. I did not hear any of my men talk to him on board the Patricia. Mr. Tomikawa I took it for granted was in the pilot house. He was there when I told him to go out on deck, that I was going to search him. The third man, Frank Oreb was asleep in his bunk. I went into the cabin. I found him in his bunk. I had a man wake him up. When he rolled over, I was standing outside of the pilot house. I was standing outside the pilot house, and one of my men was in the cabin waking him up. One of my men made him get out of the bunk. He was searched on deck by me. Subsequently I ordered the crew of the Patricia to get on board of my boat. I told them they were under arrest.

(Testimony of Frederick J. Dwight)

I placed them under arrest. Then I placed them in different positions on my boat. I then took course 300 P. S. C., or 317 true. You mean because I came across this course and figured out the mileage as it should be here. That's it exactly. That's how I arrived at my position. Did not have on board a sextant. There was one in the cabin, but I can't use a sextant. I am not able to use it. That wouldn't determine the exact position of the Patricia at that time. The visibility wouldn't allow it. It wasn't clear at that time. I am sure of that. I did not take any bearings at the point indicated D when I arrived at point D. The indications here of these various lines on that map and the letters that I made is a dead reckoning run which is done when you have no means of aids or sights, or anything, why you just take the speed of your ship. It is not possible that I am mistaken that this vessel was more than 12 miles from this point I have indicated. If I had taken the bearings I would still have my same position from D, as marked on the chart, anyhow if I was able to take bearings. I say that because I have known that ship and worked with it for the last year and a half, and I know when I am running 700 revolutions I am making my speed through the water, and I can rely on the man steering a true course. I have no objection to letting you see my log of March 23, 1932. (Witness hands log to claimant's counsel.) There is a yellow sheet there which is a duplicate copy because the white sheet may not show plain on the back of the yellow one. (Claimant's counsel hands log to the witness.) I had some trouble with the steering at that time, and I used the emergency steering. I used it longer than half an hour. I used it from 3:15 until 5 o'clock. I was steering

(Testimony of Frederick J. Dwight)

from the quadron on the stern. During the time that they were repairing the cable and the steering wheel there were no orders given. There was one man working on the cable and repairing it. I was on deck with the man steering, in the stern. This log was in the cabin. Well, I don't know the exact time these men were served with dinner; I imagine around 6 o'clock. I have no notation of that on the log; we don't put miscellaneous stuff in like that. I couldn't tell you at what point we were at 6 o'clock of that day, because it was hazy, and I could see no land marks. The sun was not down at that time. I couldn't say if it was setting at that time; it most likely was, but I couldn't see it due to the haze. In computing the figures I used nautical miles, 6080 feet. It isn't a fact that all the seamen use the geographical miles. My boat arrived at the San Pedro lighthouse at 12 o'clock midnight. My boat arrived at the Coast Guard base at 0020 or 20 minutes after 12 on March 24th. The Coast Guard Base from the lighthouse at San Pedro is about a mile and a half.

MR. SCHLEIMER: No further questions.

REDIRECT EXAMINATION

In answer to MR. CHICHESTER:

The use of dead reckoning in figuring and laying a course has been used for the past 7 years on Coast Guard patrol boats on the east coast and the Pacific coast. That manner of laying a course to ascertain my position on the water and the point at which I intend to arrive, as a rule, has been accurate during that period of time. I find it has been accurate. Well, I have to consider it, dead reck-

(Testimony of Frederick J. Dwight)

oning, due to foggy weather and so forth; it is used generally. They have no sextants. They rely on dead reckoning for traveling around the ocean at night and in the day-time. There has been no instance that I know of whatever here during the time I have been stationed at this point wherein they have piled up on the rocks or the shore of the coast. Well, from the general appearance of the boat and type of boat, she is a known fishing purse-seiner, known in these waters. There were no nets whatsoever on the boat. I have seen a purse seine; they vary. If the net was on the boat it would be possible for me coming alongside to see it.

RE-CROSS EXAMINATION

In answer to Mr. SCHLEIMER: Well, 75 feet has only a draw of about 3 feet of water, so the current that runs in this locality here doesn't interfere with it. You can take a sounding with a deep sea lead, is one way of determining your position, but at the spot where the Patricia was sighted there was 338 fathom of water, and we have no lead on board a 75 footer that will reach the bottom at that depth. It is not a fact that the only way to determine the true position of a boat on the water is by the use of a sextant or by taking her bearings. The dead reckoning will bring you within a mile of your position.

Q It is not the accurate way of determining the distance. Isn't that true?

A I have answered the question. It will bring you within a mile of your position.

MR. SCHLEIMER: That's all, sir.

MR. CHICHESTER: That is all.

(Testimony of Everett Blondin)

EVERETT BLONDIN,

called as a witness on behalf of the Government, being first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

In answer to MR. CHICHESTER: I am a seaman first class, United States Coast Guard. For about a year and 8 months in the Coast Guard. I was so employed on March 23, 1932. I was on board CG-259 at that time. I heard the testimony of Mr. Dwight that has just been given. At the time I came alongside the Patricia in the afternoon of March 23, 1932, I noticed she was very heavily in the water with all them oil drums on her stern. There was one man in the pilot house was all I could see at the time. Did not see any nets on the vessel; no fishing gear of any kind. I went in and inquired for the master of the boat— This little short man (indicating). Mr. Hirata. He said the master of the boat was left in Turtle Bay, that they were tenders for Turtle Bay Canneries. I asked for a manifest and registration papers, and he said he didn't have any. Mr. Tomikawa, the small Japanese was at the wheel. Frank Oreb was asleep in the bunk. He gave his name as Nick Baritch at the time. I argued with this fellow over his papers and I could smell whisky then, so I was watching for Mr. Dwight to come alongside; I knew he would be there any minute as soon as he called a boatswain's mate to relieve him, so I walked out to the back of the cabin where Hirata— I walked back with him, and by that time Dwight came aboard, and as soon as he came aboard he lifted up the hold and discovered whisky. I am not a navigator.

(Testimony of Everett Blondin)

I was back in the stern. I was watching the tow line and guarding one prisoner. I had binacles practically all of the time. I was searching for a small boat. The visibility was very low. In my opinion the visibility was about 7 or 8 miles, no further than that. I was searching the horizon for this capsized boat Mr. Dwight referred to. I did not see that boat. I did not see any Admiral Line steamer any time from the spot where the Patricia was brought in until I arrived at San Pedro light. I was using the binacles most of this time.

MR. CHICHESTER: That's all. Cross examine.

CROSS EXAMINATION

In answer to MR. SCHLEIMER: I was on watch from 12 to 4. After 4 we were pretty busy, and I was around the deck all the time. I didn't see any steamer. There was no steamer named "Watson" that passed there. I am sure. I didn't know of any steamers around there going or coming. I didn't see any. On the evening of March 22, 1932, I was on board 259. Out in the ocean. I did not see this steamer on March 22, 1932, going to San Pedro. I did not see the steamer at San Pedro or Wilmington at any time. I do not know the course the steamers take when they leave San Pedro lighthouse for San Diego. I do not know that. In the morning about 7 o'clock on March 23, 1932, we were over in San Clemente Island some place; I was asleep at that time. Patrolling. I was asleep at that time. I do not know if weather was clear at that time. I was asleep. Before I went to sleep it was not. It was very hazy. I do not know anything about navigation at all. I do not know very much about the speed of a boat. I would recog-

(Testimony of John D. Zaitzeff)

nize point San Juan from my boat if I was close enough about 7 o'clock, or say about half past 6 on March 23, 1932. I was down below in the cabin at that time.

MR. SCHLEIMER: That is all.

MR. CHICHESTER: That is all.

JOHN D. ZAITZEFF,

called as a witness on behalf of the Government, being first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

In answer to MR. CHICHESTER: I am a Seaman United States Coast Guard; for about 6 years. I was so employed on March 23, 1932. I have heard the testimony of Mr. Dwight and Mr. Blondin. At the time that the Coast Guard 259 approached the Patricia, I was asleep on the 259. At about a little after 3 I was called to relieve the skipper, so he could go aboard the Patricia. I was on the 259 at 11:15 A. M., of March 23rd. I had the watch that morning. I was present when the chart which is Government exhibit 2 was used to lay out a course from Point X to Point C. After receiving a message to proceed to—I can't remember the exact latitude and longitude—we got under way. We were outside of Northwest Harbor about a mile and a half off-- At Point X, approximately. Yes, and we estimated the course as 68 true and 51 P. S. C., or Per Standard Compass. Mr. Dwight and I were both in the pilot house then, and we proceeded 700 turns which gave us about ten and a half miles per hour, and after about 2:15 I turned in. I was asleep about half an hour, and was called about 3:15 to relieve my officer in charge. I was present at the

(Testimony of John D. Zaitzeff)

time Mr. Dwight laid the course. That was shortly, about 4 o'clock, or something like that. I can't remember the time. On March 23rd. The officer in charge laid it, and I had to check it over. I was on watch at that time. He had the boat then and I had to work around with the line. He laid the course and then proceeded on at that time. I stated I was on watch about 3:15 in the afternoon on March 23rd until I arrived at San Pedro light. I was up during that period of time. During that period I did not see any Admiral Line vessel. I had occasion to look around the horizon while we were proceeding. The visibility was about 7 miles. It was hazy.

Q When you were at the point where the Patricia was sighted, were you able to see any landmarks that you could recognize for any distance?

A Well, from the position where we were in a north-east direction at that time it seemed a little ways to a high mountain, but that could not be recognizable.

Q That's the only thing that could be seen?

A Yes.

Q Could you see any part of Catalina Island?

A Not at all, sir.

Q You could not?

A Not at all.

Q Was anything said to you by either Mr. Tomikawa or Mr. Hirata, or Mr. Oreb during that trip?

A No, they asked me—they admitted to me that they didn't know where they were at. They asked me if I could tell them.

Q They did.

A Yes.

The Court: Who asked you that?

(Testimony of John D. Zaitzeff)

A That gentleman over there.

MR CHICHESTER: Mr. Hirata, the man in the dark suit?

A No, in the gray suit.

Q Mr. Tomikawa?

A Yes.

Q They said they didn't know where they were?

A Yes, sir.

MR CHICHESTER: Cross examine.

CROSS EXAMINATION

In answer to MR SCHLEIMER: I say I could see the top of mountains in a northeast direction. That is on the map there. I saw the mountains. Santiago Peak. It might be here, and it might be there. I am familiar with that peak. I could not see any other mountains. I could not see the top of Catalina Island. All I saw was for about 5 minutes, and then gone. Saw it about 5 minutes. That was about 4 or 4:15. It was just about the time we started to tow the Patricia. The highest mountain you could see. It could not be very long, and then it disappeared; from then on it was hard to see. I was looking in that direction towards Santiago Peak. I say I am familiar with it; it is in that direction. I was looking in that direction. I have been on this coast for several years. I have seen Santiago Peak in clear weather a good many times.

THE COURT: Well, you are able to navigate a boat?

A Yes, sir.

Q And determine the location of your boat?

A Yes, sir.

(Testimony of John D. Zaitzeff)

THE COURT: You may proceed.

In answer to MR SCHLEIMER: I am quite familiar with that direction I have indicated on the map as Santiago Peak. On March 23, 1932, when I saw the highest point in that direction. I couldn't reply on it. It is not recognizable; it might be Santiago Peak or something else. If there is any other mountain that direction it would show on the chart. I never saw any other mountain in the direction where Santiago Peak is as high as that. I did not see any other land besides that. I did not see any other land off in the direction where San Juan point is. I say all that you could see was about 7 miles distant from the boat. That's right. I heard the previous witness testify that it was about, a little over or in the neighborhood of 10 miles off San Juan Point. We started to proceed towing the boat. We went to Pedro. Before we went to Pedro, we didn't go a little distance nearer to the shore. We turned right to San Pedro. I was not in charge of steering the boat at that time. I was repairing the ropes at that time. We didn't have enough men. So I was left repairing the wheel ropes while the commanding officer had the wheel. I cannot say at what time did I commence to repair the wheel ropes. About 5 o'clock they were fixed. I commenced it, as soon as we started to tow the Patricia. We started to tow the Patricia I would say about 4, somewhere around 4 o'clock. From 4 o'clock, when we commenced to tow the Patricia, to about 5 o'clock I was busy repairing the ropes. I was watching for steamers passing by there while I was repairing. There was somebody else besides me on watch while I was repairing the ropes. I have no license as a master, or as a pilot. They don't require it in the Government

(Testimony of W. N. Beckwith)

service. I have no master's license. We took bearings on March 23, 1932, about 11:10. At Northwest Harbor, San Clemente Island. The weather was not clear then. We took the last bearing just before we entered San Pedro Channel, shortly before midnight. We were pretty close then; we were right at Pedro lighthouse at 12 o'clock.

MR. SCHLEIMER: That is all, your Honor.

MR. CHICHESTER: That is all, your Honor. The Government rests, your Honor.

W. N. BECKWITH,

recalled as a witness on behalf of the Claimant, having been previously duly sworn, was thereupon called in rebuttal, and testified as follows:

In answer to MR. SCHLEIMER: I was present here when the first witness on behalf of the Government pointed out the various points on the map. I recall where the first Government witness indicated point X on the chart. I examined that chart and made measurements while he was testifying. As a result thereof, I found from point X, from the point of departure, to this point, I found 36 miles distance. From point C to point D, as indicated on that chart, I found about 6 miles. From point D to the shore, about ten and a half miles. I heard his testimony in which he explained that he arrived at a true course in the measurements here. That is the proper way to measure to arrive at the course. By dead reckoning. That is not accurate. Ocean Currents, slip of wheel, winds, tides, and also you are not sure of the speed of your vessel. In case of haze where you can't see, regardless of the horizon, with a sextant aided by

(Testimony of W. N. Beckwith)

artificial horizon. If you can't see some celestial body, such as the sun or a star. There is an other way to determine the position of the vessel in such weather. They try soundings, but they are not accurate. There are a good many alike on this part of the coast, that are the same. The soundings here in a 30 fathom curve go in for 3 or 4 miles from the shore and then extend out 10 or 12 miles off shore in the vicinity. It goes 10 or 12 miles off shore so therefore it is not accurate. When you are running on soundings you must either have your latitude or longitude to proceed on, and then you can proceed along and pick up soundings as you go and refer to them. That's a fair guide, but not accurate; otherwise land bearings are the best guide. Land bearings are the best guide when available; soundings are not, and dead reckoning is very poor. There are considerable currents between San Pedro and San Diego. The ocean currents are variant as far north as Cape Loma and Cape Flattery. Winds affect that and tidal waves, and so forth. I have come from Catalina Island sailing yachts, power yachts, a distance of 22 mile^s, in a current, and I have allowed as much as 5 miles for drift of current in a distance of 22 miles.

MR. SCHLEIMER: That is all. You may cross examine.

CROSS EXAMINATION

In answer to MR. CHICHESTER: I am a captain; master. I have been master of large liners or vessels. The speed of those large vessels is determined by observation of land and by bearings. The same as the small boat people do, by sextant angles, latitude and longitude,

(Testimony of W. N. Beckwith)

and at night by the use of celestial bodies. The log is not regarded as much now. In a large vessel now, you put the log out 12 to 14 hours after leaving port, and then you take it on board until you are within 24 hours of the destination. Usually they put it out 24 hours before reaching the destination to assist them in case of foggy weather or something of that kind. I operated in sailing schooners, yachts, motor yachts, and ocean steamers, and small steamers. I never operated a speed boat from San Diego to San Pedro. I have steered speed boats and run over to the Island with them. I never had control of a speed boat, the motors, the wheel, and running of a speed boat as a master would on larger boats. My experience has been confined to all types of vessels with the exception of speed boats. It is a fact that speed boats don't draw much water. A vessel that doesn't draw much water would sometimes be affected more by the weather than a vessel that does draw it. Well, the winds—there is a chance for difference of opinion. There are certain currents, some deep currents, some currents at 30 feet, and sometimes as adverse as at 3 feet. I never operated a speed boat at all. I don't know how much a speed boat may drift in a current or wind from actual experience. I can't say that I ever saw a speed boat drift from current or winds. I don't know how much they would drift over a course of 25 or 50 miles. The wind would give it more drift. I know how to refer to dead reckoning generally as to accuracy.

MR. CHICHESTER: That is all.

MR. SCHLEIMER: We rest again.

MR. CHICHESTER: At this time, your Honor, we move to amend the libel and include another count under Section 46, U. S. C. A., 60, which is Revised Statutes 4189, and the violation will allege that the vessel was using a record or document in lieu thereof when she was not entitled to the benefit thereof and that the use was fraudulently made.

MR. SCHLEIMER: We object to any amendment at this stage of the proceedings. We haven't appeared generally. We have appeared specially, and I respectfully submit at this time that the Government should not be permitted to amend. We have rested on the evidence. If they desire to amend they probably will have an opportunity to allege that point when the main issue would come before your Honor, if it does come before your Honor.

THE COURT: Well, we see no occasion to go into the question of any additional alleged violations until we come to consider whether or not the Court may try the case upon its merits. At that time counsel may renew any application to amend in accordance with the theory just announced.

THE COURT: Well then, I think we will make an order continuing these proceedings until June 6th, that counsel for the claimant will file his memorandum of points and authorities on or before June 2nd, that is next Thursday.

MR. SCHLEIMER: That's all right.

THE COURT: June 2nd, and Government counsel then will advise the Court by June 6th whether or not there will be any additional or reply memorandum filed?

MR. CHICHESTER: Yes, your Honor.

(Whereupon an adjournment was taken.)

Los Angeles, California, Monday, June 13, 1932,
10 o'clock A. M.

MR. SCHLEIMER: This is an application made by the Objector to defer the decision on the matter that was taken under advisement and for permission to reopen that matter and for leave to file the affidavits attached to the motion papers, and if the attorney for the Government desires to cross examine the affiants upon that particular question, that we be permitted to call these witnesses for that purpose. Mr. Schleimer read the notice of motion dated June 10, 1932 and the affidavit of Toichi Tomikawa sworn to June 9, 1932 and the affidavit of Max Schleimer sworn to June 10, 1932 upon which said motion was predicated. (Argument.)

MR. PARKER: (Argument.) Now counsel comes in with a motion to reopen the case in order to submit additional evidence. If the motion which is presented here in affidavit form is presented solely on the question of the jurisdiction or the objection to the jurisdiction, we have no objection to that matter being submitted in affidavit form, but we wish it understood that in stating we have no objection we do not agree to the submission of that evidence on the decision of the issues of the case on the merits, because we do not have an opportunity of

cross examining these witnesses whose testimony is presented by affidavit form, and if the matter goes further we desire that. Therefore I request that this matter be considered as before the Court at this time solely on the question of jurisdiction, and if the Court decides there is jurisdiction in the court to consider this libel, I then request that the matter be brought on for further disposition. We have practically put in all the evidence we desire to put in on this matter with the exception that by these affidavits there may be other matters put in which we may desire to answer. I want to call the Court's attention to Section 615 of the Tariff Act, which throws the burden of proof on the claimant. This places the burden on him and the right of the Government to answer. I want to add this, that we make no objection to those affidavits because we consider them absolutely immaterial to the matter of jurisdiction.

(Argument by Mr. Parker, citing authorities).

THE COURT: In other words, the position of the Government counsel is that these objections that are here sought to be raised do not go to the question of the jurisdiction of the Court to proceed, but rather may be raised possibly when we come to consider the case upon its merits?

MR. PARKER: Exactly so.

(Argument by Mr. Parker).

MR SCHLEIMER: (Argument).

THE COURT: May we interrupt here: We understand that Government counsel has no objection to reopening the cause for the purpose of filing these affidavits, the same to be considered solely on the objection to the jurisdiction and for no other purpose?

MR. PARKER: That is correct your Honor.

THE COURT: Very well, then, an order will be entered reopening the cause for the purpose of submitting the affidavits presented. The affidavits will be ordered filed and considered solely in connection with the objection to the jurisdiction. That leaves the matter now in the position in which we were at the previous hearing except that we now have these additional affidavits.

(Argument.)

Mr. Schleimer then read into evidence the affidavit of William Lambie, which is as follows:

State of California)
) SS
County of Los Angeles)

I, William Lambie, being first duly sworn, depose and say that I am a Naval Architect, and have conducted my business for the past ten years, at Security First National Bank Building, Wilmington, Calif.

That I did on the 8th. day of June 1932, at the request of Mr. Max Schleimer, made certain calculations in order to determine the speed of the Japanese Vessel "Patricia", whose dimensions are as follows:

Length	82 feet.
Breadth	18.5 feet
Draft Loaded	8.75 feet
Brake Horse Power	100.

The above mentioned calculations results of which are shown on the accompanying chart indicate that the maximum speed obtainable with 100 Brake Horse Power is 7.9 nautical miles per hour.

William Lambie

Subscribed and Sworn to before me, this 8th day of June 1932.

[Seal]

Don C Pohl

Notary Public in and for the County of Los Angeles,
State of Calif.

Mr. Schleimer then read in evidence the affidavit of P. B. Young, which is as follows:

COUNTY OF LOS ANGELES)	
)	SS.
STATE OF CALIFORNIA)	

This is to certify that I, P. B. Young, Surveyor to the Board of Marine Underwriters of San Francisco, being duly sworn, deposes and says, that I did at the request of Mr. Max Schleimer, calculate the speed of the Fish Boat "PATRICIA" vessel having the following particulars:

Registered Length	82'
Breadth	18.5'
Draft Loaded	8.75'
Horsepower	100

From my calculations, the maximum speed of the Fish Boat "PATRICIA" in a loaded condition is 7.6 knots per hour.

P. B. Young
 P. B. Young, Surveyor
 BOARD OF MARINE UNDERWRITERS
 OF SAN FRANCISCO

Subscribed and Sworn to before me, this 8th day of June 1932.

[Seal]

Don C. Pohl

Notary Public in and for the County of Los Angeles,
 State of Calif.

THE COURT: The matter will stand submitted.

(Whereupon, the hearing in the above entitled matter was adjourned.)

At a stated term, to wit: September Term, A. D. 1932, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 13th day of October in the year of our Lord one thousand nine hundred and thirty-two.

Present:

The Honorable Harry A. Hollzer, District Judge.

The objection to the jurisdiction of the Court, also the motion to quash seizure and to dismiss the within proceeding and the petition to quash the seizure and all proceedings based thereon, are and each of them is denied.

An exception is allowed to the Claimant.

LOS ANGELES, CALIFORNIA,
MONDAY, OCTOBER 31, 1932, 10 o'clock A. M.

(Argument.)

MR. SCHLEIMER: To the effect that the steamer was about 13 or 14 miles—I have forgotten which—I think about 14 miles from the coast, and this particular boat was about 3 miles from her. That would show that she was outside of the jurisdiction of the Court.

THE COURT: Well, may we say that from our examination of the record, we are convinced that the defendant owner of the boat didn't know where his boat was; that his testimony in that regard is of very little value, in contrast to the testimony of the officers of the Coast Guard, whose business it is to know where their boats are, and whose testimony impressed us as being both reasonable and in accordance with the facts. It is our thought that this case might very well be presented, as counsel have indicated they intend to present it, upon the evidence taken. We believe that ultimately the termination of this case involves a question of law, rather than of fact. And, as far as the facts are concerned, we see no occasion for any other conclusion than that the boat was within the legal limits of seizure. We should probably have time next week for the hearing of any arguments.

MR. CHICHESTER: My only difficulty in that regard, your Honor, is that unless it be on Monday, I am engaged in trial for the next three weeks every day in court. Unless November 21st, that's a Monday, would be open at that time, if it is available to your Honor, or any week day thereafter.

THE COURT: Well, then, we will set the matter for November 21st, at 2 o'clock P. M.

MR. SCHLEIMER: Thank you, your Honor.

Los Angeles, California, Monday, December 5, 1932.

THE COURT: Are you ready in this matter, Gentlemen?

MR. CHICHESTER: We are ready for the Government.

(Argument.)

MR. SCHLEIMER: May it please the Court, at this time claimant and respondent move to dismiss the libel of information, upon the following grounds: First ground is that the libel in Count 1 is for alleged violation of an alleged license, and it is not alleged in the libel of information that a license was issued, and the nature of that license. Paragraph 1 alleges the seizure; paragraph 2 alleges the appraisal; and paragraph 3 alleges that there was awarded by the Collector of Customs a number of the vessel "Patricia"; it doesn't allege whether that is a license or what the fact is regarding the number; as a matter of fact, the number is not a license; it is not a registration or an enrollment; therefore, the count upon its face does not allege facts sufficient to constitute a cause of action. Count 2 has improperly combined three different and independent alleged causes of action in the one count. Paragraph 1 simply repeats certain other paragraphs of Count 1; paragraph 2 alleges the seizure of the cargo, paragraph 3 the date of seizure, and that the Master has failed and refused to produce a manifest; paragraph 4 alleged two offenses—one, the penalty of

\$500.00, and the other a penalty; paragraph 5 set forth another penalty under a different section. As I understand the rule, each violation or alleged violation of the statute is an independent cause of action and cannot be united with other counts—or other offenses in one count.

MR. SCHLEIMER: I also move to dismiss the libel of information, upon the ground that it does not allege that this Honorable Court had jurisdiction over the vessel "Patricia" on the date of the filing of the libel of information, and, therefore, the libel and information is insufficient upon the face thereof. This Honorable Court has no jurisdiction of this action, for the following reasons: that the libel and information must allege that this Honorable Court had or has jurisdiction of the vessel "Patricia"; that the libel and information alleges that the vessel "Patricia" was in custody of the United States Coast Guard, Section Base 17, in the Harbor of Los Angeles, which is but another way of alleging that the said vessel was then under arrest, and it is not alleged that she was lawfully arrested; that it appears on the face of the libel and information that the agents of the United States Coast Guard, Section Base 17, seized the vessel "Patricia", March 23, 1932, but it doesn't allege the place where she was seized; so as to show that the seizure was made within the territorial limits of the United States and was within the limits of the jurisdiction of this Honorable Court.

MR. SCHLEIMER: (Argument and citing cases.)

THE COURT: It seems to us we have gone over these matters and are now re-tracing our steps. In the ruling heretofore made, the court decided in its order the objection to the jurisdiction of the court, also the

motion to quash the seizure and to dismiss the proceeding, the petition to quash and all proceedings based thereon, and each of them is denied; we find nothing new in the argument which is advanced here, unless there is something further to be said by Government counsel.

MR. CHICHESTER: We have nothing to add to the authorities cited; we assume, however, that they have all been gone into by Your Honor; in view of Your Honor's ruling, we see no reason for adding anything to what has been said; I have heard nothing new by way of authorities.

MR. SCHLEIMER: May it please the Court, perhaps I didn't make myself clear. The objection raised to the jurisdiction was by special appearance for the purpose of quashing the proceeding,—I mean the seizure; the objection now goes to the sufficiency of the libelant's information.

THE COURT: Yes, we understand; but the argument which has been advanced today is, in substance—though it seeks to travel along a different route, nevertheless it is an argument which presents the same law; we believe we have gone into that matter.

MR. SCHLEIMER: But, may it please the Court, if it is necessary to allege the place where the seizure is made, and that isn't alleged in the complaint, and if it be true that the jurisdiction of this Honorable Court must appear upon the face of the libel - -

THE COURT: Your contention is that the libelant should have stated what the truth disclosed, that the seizure was within the territorial limits of the United States, and particularly of the Southern District of Cal-

ifornia? That, in substance, is the meat of your contention,—is that correct?

MR. SCHLEIMER: May I respectfully state this,—that is not the way I would put it; my contention is that the complaint, the libel information, does not state where the seizure was made by the Coast Guard authorities; and I will say that the contention of the Government was, at the prior hearing, on the application to quash; that it was within the twelve mile limit; but there is something else to be said about that which I will say later; but I cannot raise that on this motion.

THE COURT: Now, may I ask Government counsel, is it desired to amend the libel so as to recite what the proof discloses, that this vessel was seized within the jurisdiction of this court?

MR. CHICHESTER: I hardly see the necessity, because we have alleged that the vessel at the time of the violation of the libel was within the jurisdiction of the court; in the case of Ford vs. United States, that was sufficient in respect to jurisdiction.

THE COURT: We are only concerned here with the libel, and if at the time the libel was filed the vessel was within the jurisdiction of this court, the other matters had to do with the right of the Government to take the vessel, in the first place, and seize it; we have gone into that and ruled upon it. The motion to dismiss is denied, and you may have an exception.

MR. SCHLEIMER: May the record show that I have an exception to each and all of the grounds made by me?

THE COURT: Yes.

MR. SCHLEIMER: And at this time, may it please the Court, that at this time it is stipulated between the libelant and claimant and respondent, that the testimony of the witnesses and the evidence taken on behalf of the *libeler* on the hearing of the application made by claimant to quash the seizure, and to quash all proceedings had thereon, be deemed as taken on behalf of the libelant in support of the libel and information, with the same force and effect as if the witnesses were now here and sworn and had testified in open court on the trial hereof?

MR. CHICHESTER: We so stipulate.

MR. SCHLEIMER: It is also stipulated between the libelant and claimant respondent that the testimony and evidence taken on behalf of the claimant respondent on the hearings, on his application made to quash the seizure and set aside all proceedings had thereon, together with the affidavits filed by claimant and respondent on his application, and the affidavits and exhibits filed by the claimant and respondent on his application to reopen that proceeding—that is, the proceeding to quash, be deemed as testimony and evidence taken on behalf of the claimant respondent in support of his answer filed in this case, and in opposition to the libel of information, with the same force and effect as if the witnesses and the affiants were sworn and testified now in open court at the trial of this case, and that the objections and exceptions, if any, taken by claimant respondent be deemed as taken on this trial; might I amplify that by submitting this statement: I do not recall off-hand any objections or exceptions taken; but my purpose of putting this into the stipulation was that Your Honor was good enough to grant us an exception to your ruling on the

motion denying the application to quash; and we wish to preserve that exception.

MR. CHICHESTER: We do not care to stipulate as to the affidavits to which counsel refers; we will include in the stipulation that if the witnesses whose affidavits are referred to in the stipulation were called, they would testify in accordance with the statements contained in the affidavits, but not as to the truth.

THE COURT: That is what we understand the stipulation is intended to cover.

MR. SCHLEIMER: That is all its amounts to.

THE COURT: Then we understand the Government wants to amend that libel?

MR. CHICHESTER: Yes.

THE COURT: The amendment is granted.

MR. SCHLEIMER: I wish counsel would answer my request, whether he will so stipulate.

MR. CHICHESTER: We so stipulate, with the modification.

THE COURT: We understand Government counsel joins in the stipulation, with the modification heretofore noted, about the recitals in the affidavits; the truth of these recitals is not admitted, but it is stipulated that we have as testimony in the case the recitals contained in these affidavits.

MR. CHICHESTER: That is correct. What about our motion to conform as to the proof?

THE COURT: Yes; the Court has granted leave to amend.

MR. SCHLEIMER: May I respectfully ask the court at this time that the court grant permission to amend our answer, or that our answer be deemed amended, so as

to take in the proof with regard to which the motion was granted,—in other words, conform with the proof is but another way of amending a complaint; and unless we make request for permission to answer that particular portion—

THE COURT: The court allowed the amendment, with the condition that that shall be deemed denied.

MR. SCHLEIMER: It is agreeable to us.

MR. CHICHESTER: If Your Honor please, in support of the Government's position, we have a few authorities which we will cite, without alluding to them at length.

MR. SCHLEIMER: May I interrupt, Mr. Chichester? May I suggest this,—that I should be permitted to take the initiative on the motion; in other words, that if you permit me to make the statement, if there is anything new, then you can answer? I think that would save a great deal of time; of course, I expect to take quite a bit of time, not unnecessarily, in going into the merits.

THE COURT: We have this suggestion to make to counsel: Counsel appreciates the restrictions upon our time—to the extent that the points and authorities be presented by respective counsel are to assist us, and we find it advantageous to have the same presented in written form, preliminarily, so as to enable the court to examine the same, and thereby direct the oral argument in those channels which will be of help to us in reaching a decision; we find more or less handicap in listening to oral argument respecting which we have not been preliminarily apprised of the respective contentions of counsel; hence, we prefer that this be in the form of written memoranda, with additional points and authorities to

which our attention shall be directed; we will undertake to study the same, and if, after examination of same, we find that oral argument would be helpful, we will indicate in what respect such oral argument is needed; in event we conclude, after studying the authorities, we are prepared to decide the case without oral argument, we will act accordingly.

MR. SCHLEIMER: Then I ask permission at this time that I be permitted to make my motion as though this were the close of the entire case; if it please the court,—

THE COURT: Suppose you state your motion.

MR. SCHLEIMER: I want to state my motion as briefly as I can without argument, and state this motion as though it were made at the close of the entire case, because it is the close of the case: Claimant and respondent, may it please the Court, is moving at this time for judgment in his favor, upon the following grounds: That the undisputed evidence is to the effect that the claimant and respondent was at the time of the seizure, and prior thereto, a Japanese, a citizen of the Empire of Japan; that he, at the time of the seizure, and prior thereto, was and still is the sole and exclusive owner of the vessel "Patricia", the vessel seized in this proceeding; that by reason of his citizenship, the vessel "Patricia" is deemed as a foreign vessel, and for that reason the agents of the United States Coast Guard had no jurisdiction or authority to go on board that vessel and seize her at the point and place where she was seized on the high seas; second—my second ground of the motion: That the Collector of Customs had no authority—no power, authority or jurisdiction to number the vessel

“Patricia” as an undocumented vessel of the United States, for the following reasons: that he knew the applicant, the claimant and respondent in the case, was not a citizen of the United States, but a Japanese and a citizen of the Empire of Japan; that the provisions which permit the numbering of an undocumented vessel apply exclusively to vessels owned exclusively by citizens of the United States, and not by foreign citizens who happen to be in the United States; that Sec. 288, Chap. 12, title 46, of the U. S. C. A., and Section 45 of Chapter 2, title 46, U. S. C. A., under which the Collector of Customs attempted to number the vessel, must be read together with Sections 11, 58, 60, 61, of Chapter 2, title 46, U. S. C. A., and Sections 251 and 252, Chapter 12, title 46, of U. S. C. A.; and when so read it will appear that the Collector of Customs did not have power, authority or jurisdiction to number the vessel as an undocumented vessel; that the act of the Collector of Customs in numbering the vessel “Patricia” is null and void and of no legal force and effect; that the vessel “Patricia” must, for these reasons, be deemed a vessel as though she was never numbered by the Collector of Customs.

My third ground of the motion is as follows: That the vessel “Patricia” must be judged by her nationality, and that her nationality is deemed to be the nationality of the owner; and her owner being a Japanese and a citizen of the Empire of Japan, the vessel “Patricia” is likewise deemed a Japanese vessel belonging to the Empire of Japan.

My fourth ground of the motion is as follows: That the vessel “Patricia” must be judged as a vessel of the Empire of Japan, then the evidence on behalf of the

libelant is insufficient in law to grant the prayer of the libel and information, for the following reasons: There was no evidence introduced by the libelant that she was in contact with any other vessel or boat on the high seas at the point or place where she was seized; that there was no evidence introduced by the libelant of her speed, or that the vessel "Patricia" could traverse in one hour from the point where seized on the high seas to the nearest point to land of the territory of the United States, as provided for in Article 2, Section 3 of the Convention between the United States and Japan, proclaimed January 16, 1930, U. S. Rev. Stat. 46, pages 2446 to 2448.

My fifth ground of the motion is that the undisputed and uncontradicted testimony of the witnesses for the claimant and respondent is as follows: That her maximum speed, when laden, is 7.6 nautical miles per hour, or 7.9 nautical miles per hour; that between March 15, 1929, and March 15, 1932, while on the high seas, the vessel "Patricia" could not make a speed of more than 7 knots per hour; that by reason of that, the vessel "Patricia" could not have traversed in one hour from the point or place where she was seized on the high seas, to the nearest point to land of the territory of the United States, provided for in the Convention between the United States and the Empire of Japan, proclaimed on January 16, 1930.

MR. CHICHESTER: May I have that citation?

MR. SCHLEIMER: U. S. Statutes, 46, pages 2446 to 2448.—

Now, my sixth ground of the motion is as follows: That if this Honorable Court's decision on the motion—on the application to quash be regarded as a decision, that

the Convention referred to by me does not apply to the vessel "Patricia", and that that would be tantamount to a decision of failing to give effect to the provision of that Convention; by Article 6 it was expressly agreed by the high contracting parties, that they shall each enjoy all the rights they possessed prior thereto, which I take it means that the territorial limits of the United States was to be regarded as three miles off shore, and, therefore, upon the libellant's own showing, the seizure made was outside that limit, and was therefore unlawful.

My seventh ground of the motion is—

THE COURT: How many grounds have you, there?

MR. SCHLEIMER: I have two more, Your Honor, but I will be very brief: that the undisputed and uncontradicted evidence on the part of claimant and respondent shows that the master of the vessel Patricia came to the point where she was seized, in order to ascertain his position, to get his bearings, and intended to return to the place where he had been, which was very far out at sea, on the high seas, and that when he came into the place where he was seized, for the purpose mentioned, that the Coast Guard authorities had no jurisdiction to seize the vessel, because it had a right under the statute to come in for that purpose, and he wasn't violating any law.

My eighth ground of the motion is: That the vessel Patricia was seized on the high seas, in violation of the Statutes of the United States; and my ninth ground of the motion is that the vessel Patricia was seized on the high seas, in violation of the Convention between the United States and Japan, to which I have already called the Honorable Court's attention. There is one particular

point that I would like to very briefly call to the attention of the court.

THE COURT: May we repeat that the value of your argument will be enhanced after the written memoranda have been filed? We are going to suggest that a time be fixed for the serving and filing of these memoranda.

MR. SCHLEIMER: If the Court please, I am at present working on two very urgent briefs, and there is awaiting me a reply brief that I have to file in the State Supreme Court, involving very important questions, and, as long as Your Honor is going to take this under advisement—

THE COURT: We do not want to keep it under advisement to such a length of time that we will have forgotten the evidence and will have to read the transcript over; our thought is that while the points are comparatively fresh in our minds, that we proceed to present the written arguments; let us set down a reasonably early date for such oral arguments as may be necessary; how long will it take? In the first place, the Government, of course, is the moving party, so far as seeking forfeiture under this libel is concerned; how long will it take Government counsel to file his brief?

MR. CHICHESTER: If Your Honor please, I will be in court all the balance of this week, and if I may have a week from next Friday, I am sure I can get in all our authorities by that time.

THE COURT: May we suggest that Government memoranda be filed within two weeks from this date, and that claimant, respondent have two weeks thereafter to reply; and if the Government desires to add anything further, that that be done within five days thereafter,

and we will set this matter down for oral argument on the last Monday in January; what date will that be?

THE CLERK: The 30th of January.

THE COURT: January 30th, at 2 P. M.

MR. SCHLEIMER: May I, before I leave, make this statement: All the grounds of my motion resolve themselves in one question, and that is on the testimony; that is undisputed; that is, whether the claimant was a Japanese citizen; that is the entire proposition on the question of law; however, the Government has two weeks to file its brief, and we will have two weeks thereafter?

THE COURT: Yes.

LOS ANGELES, CALIFORNIA,
MONDAY, FEBRUARY 27, 1933.
2:00 o'clock P. M.

THE CLERK: 5567, United States vs. the Boat Patricia.

MR. SCHLEIMER: My understanding is, your Honor, that this is to be continued?

THE COURT: Yes, this is one where we have asked counsel to continue so as to make way for the resumption of argument in a case in which counsel are restricted as to the time they can be here. Mr. Chichester has been handling this case.

MR. SCHLEIMER: It is my understanding, your Honor, that the counsel were not to be present today, that it would go over for a week at any rate.

THE COURT: Yes.

MR. SCHLEIMER: I happened to be here on another matter, in the building, so I stopped in.

THE COURT: It just occurs to us that it had better go over two weeks. March 13th.

MR. SCHLEIMER: As I understand, your Honor indicated the last time you were here that you would advise us in advance as to whether or not you cared to hear further argument and on what particular points?

THE COURT: Well, in that regard, there really strikes us, there are two main questions, one of which we are inclined to think has been disposed of by a recent decision of the United States Supreme Court to the effect that if this boat be regarded as a foreign vessel, then the fact that the place of seizure was more than one hour's sailing from the territorial waters of the United States would make the seizure illegal. That, in other words, would relegate us to the second query, was the numbering of the boat in effect a legal registration of it so as to make it a domestic vessel?

MR. SCHLEIMER: I don't recall, your Honor, the case that you refer to, the recent case.

THE COURT: Well, that is that Canadian boat that was seized.

MR. SCHLEIMER: In San Francisco?

THE COURT: No, off the Atlantic, just a few weeks ago.

MR. SCHLEIMER: It is in the advance sheets?

THE COURT: Yes. I think it was decided—

MR. SCHLEIMER: I will find it, your Honor.

THE COURT: —either late in December or early in January, in which the Court held that the treaties

were paramount and prohibited the seizure of the foreign vessel at a place more than one hour's sailing from shore, and the proof in this case indicates that it was seized at a point more than one hour's sailing distance. And we suggest that to counsel because that leaves for further discussion the question,—did the fact that the Department gave this boat a number constitute it a domestic vessel?

MR. SCHLEIMER: I shall be prepared to meet that question. I believe I called your Honor's attention to the various provisions of the Act which made it illegal on the part of the Customs House Collector to number the vessel.

THE COURT: Well, it is not merely a matter of reading the statutory provisions. It is more a question of their application and their meaning. That is, the fact that something was done with reference to this boat that can be done ordinarily only with reference to a domestic vessel.

MR. SCHLEIMER: As I recall it, it makes a felony for the Collector to number a vessel owned by a foreigner. However, there are two decisions in which the statutory provisions are discussed when they are employed or applied to domestic vessels unless it is not to vessels owned by foreigners. However, I shall give this careful attention and I shall be ready to meet that.

THE COURT: It comes up then, two weeks from today.

MR. SCHLEIMER: Thank you, your Honor. In the afternoon, is it?

THE COURT: Yes.

LOS ANGELES, CALIFORNIA,
MONDAY, MARCH 13, 1933.
10 o'clock A. M.

MR. CHICHESTER: May it please the Court, in the matter of the *Patricia*; I understand counsel are objecting to our reopening the case for the introduction of further testimony, and for that reason we move that the matter be continued, that is, the hearing which is now set for this afternoon, until next Monday at 3:00 o'clock P. M., and at this time I make an oral motion and wish—it to be deemed a notice of motion to counsel that motion will be made next Monday at 3:00 P. M. in conjunction with the argument, which will, with your Honor's consent, be continued until that time, to reopen the case for the purpose of introducing testimony of a member of the Japanese Consulate or the Japanese Consul, which testimony will in effect and in substance be that the respondent vessel, *Patricia*, is not registered under the laws of the Japanese Empire, is not under the protection of the laws of the Japanese Empire, and does not carry and did not carry at the time it was seized the flag of the Japanese Empire. That testimony will be adduced through some member of the Japanese Consulate. That is the purpose of the further testimony of the Government.

THE COURT: Well, so far as the physical conditions are concerned at the time of the seizure of the vessel, perhaps counsel can stipulate concerning the facts, and if not, it will be a comparatively simple matter to introduce proof as to whether or not the vessel was flying

the flag of the Japanese Empire. The other matters apparently pertain to questions of the law of Japan.

MR. CHICHESTER: And the records of the Japanese Consul.

MR. SCHLEIMER: May it please the Court, the claimant objects to any motion made at this time, first, because an oral motion cannot be made. It must be made upon records, upon documents, or papers served upon me. Second, the motion is rather, or rather the complainant is guilty of gross laches of the worse kind. From the very inception of the case, when I stepped in, I urged the Court was without jurisdiction because this vessel was owned by a Japanese citizen. That was almost about a year ago. I kept on urging that on every hearing that we were in court and in every brief that we were required or we did submit to the Court. After the case was closed, at this time to come in and ask that this case be reopened for that purpose seriously affects our defense, for this reason: We urged as a preliminary motion before filing an answer to quash the proceedings, because of the insufficiency of the complaint, the failure to comply with the rules adopted by the United States Supreme Court. We urged a number of objections. Counsel well knew of this present situation and until the Court had indicated at the last hearing, the ruling and eliminated a number of points and limited the question to one particular point, they now come in and ask to practically introduce laws of Japan and they ask me that I should waive the right of the claimant for the purpose of this motion. There are a number of points that this

question will involve. There are other treaties, there are other laws to be considered, if they are to be allowed to make the motion.

Now, all I ask your Honor is this, and I suggested that to Mr. Chichester, that I have no objection to the matter being continued for another week if the Court is disposed to give time. Let him make the motion upon notice to me and upon affidavits, so that we will have a complete record, so that I can properly meet his contention, his claim. I don't propose to come in and stipulate at this time to something of which I have no knowledge at this moment. Your Honor heard him say that he wants to offer the laws, the laws of Japan, through the Japanese Consul.

MR. CHICHESTER: No such statement was made, your Honor, if I may make a suggestion.

MR. SCHLEIMMER: Well, you said a minute ago that you wanted to—

THE COURT: Now, may we offer this thought: There are other counsel waiting here to be heard. We are satisfied that we will not go ahead with this hearing this afternoon. There will be no objection to a written notice of an application being made to reopen the case supported by whatever affidavit Government counsel may deem appropriate, and the matter can be noticed sufficiently in advance so that it can be heard two weeks from today instead of one week from today. And in that connection, may we point out that at the previous stage of the case the Court at the request of the respondent reopened this case and allowed the respondent

to present additional proof. And while we recognize that each side is entitled to be apprised in advance as to the nature and grounds of any motion, nevertheless, it is our view that this case should be decided upon its merits, and if either side has additional evidence to offer, provided that it gives the other side notice in writing as to the nature thereof before the case is ordered submitted, we believe that opportunity should be accorded, especially in a case such as this where a decision based upon one set of facts might be unwarranted by virtue of a change in some of those facts. The seizure of a vessel on the high seas is a serious matter, and the contention of the respondent that it involves a violation of the treaty with a friendly power only adds to the responsibility resting upon the Court to give consideration to only the facts and not when its attention is called to a situation that there is possibly some facts that have to bear upon the merits of the case not yet in the record. We shall continue these proceedings, then, until two weeks from today, and suggest that the application for reopening be given in writing and service be made at least five days prior to that date.

MR. CHICHESTER: Very well, your Honor.

MR. SCHLEIMER: May it please the Court, your Honor will remember I served the affidavit of the affiants and attached the exhibits so that I gave them full information as to what I wanted to introduce at the time when the Court would open the case for that proof and that is what I am asking them to do.

THE COURT: Well, undoubtedly that is what Government's counsel will do.

MR. SCHLEIMER: I may, after they serve me with the affidavits and the notice, I may consent to it, I don't know. But that is the point, I want to see it in writing, to see that they do it the same as I did.

THE COURT: Counsel is entitled to have it in writing.

MR. SCHLEIMER: Thank you. Is that 2 o'clock two weeks?

THE COURT: Two weeks, 2 o'clock.

MR. SCHLEIMER: Thank you.

(Whereupon, an adjournment was had to March 27, 1933 at 2 o'clock P. M.)

LOS ANGELES, CALIFORNIA,
FRIDAY, MARCH 24, 1933.
10 o'clock A. M.

THE COURT: The first matter we have has to do with is the motion to reopen the cause—

Mr. Chichester read the notice of motion dated March 14, 1933, and the affidavit of Frank M. Chichester sworn to March 14, 1933 to reopen the proceeding and to permit the libelant to offer additional evidence.

MR. SCHLEIMER: May I address the Court?

THE COURT: Just a moment. May we inquire whether or not there is any affidavit or affidavits to be considered other than the affidavit filed in support of the motion, Mr. Schleimer?

MR. SCHLEIMER: There has been an affidavit filed and served, my own affidavit, but since I prepared that affidavit I have read the reporter's transcript and par-

ticularly what Your Honor stated at the last hearing, and it occurred to me after studying it carefully, perhaps I did not get the drift of it when Your Honor stated it from the bench, that Your Honor desires to hear additional evidence on one particular issue so as to enlighten the Court in determining whether or not this vessel is an American or a foreign vessel.

Mr. Schleimer then read the affidavit of Max Schleimer filed March 22, 1933 in opposition to said motion.

THE COURT: That is the sole issue to which further evidence is directed, as we understand it.

MR SCHLEIMER: As to that, Your Honor, since the Court has indicated, I am not disposed to stand in the way. I will aid the Court in submitting the evidence. I have subpoenaed the records of the Collector of Customs, and I have also here the man who has charge of these records, and who has been in the Customs House in that particular branch for the last 16 years, and we are ready to offer this evidence on that sole issue.

MR. CHICHESTER: May it please the Court—

MR. SCHLEIMER: Now, one moment.

MR. CHICHESTER: Pardon me.

MR. SCHLEIMER: One moment please. There is a statement in my affidavit that I have never disputed, never claimed throughout this proceeding that this particular vessel was either registered or documented by the Japanese Government. My contention from the very inception of the case was that this vessel is owned by a foreigner, and that the nationality of the foreigner is the nationality of the vessel. So that would perhaps eliminate a great deal of testimony on the part of the Government.

THE COURT: Well, perhaps we might ask Government counsel to state in substance the proof to be offered and before that is done, we notice that this hearing was originally scheduled for next Monday afternoon, and we understand that both sides consent that the hearing may be advanced and proceeded with at this time?

MR. CHICHESTER: Yes.

Mr. Schleimer: Yes, Your Honor, I consent.

THE COURT: Well, then, may we ask Government counsel to outline the proof to be offered and perhaps it can be covered by stipulation?

MR. CHICHESTER: My intention was to obtain from the Japanese Consulate, either through the Consul or Vice-Consul, the record books which I understand they have in their possession of all vessels registered and recognized by the Japanese Government as being Japanese under their registry laws, that is, laws of a similar nature to our own laws. To also obtain the information from the Consul concerning the use of the word "Maru", concerning a Japanese vessel, a vessel recognized by the Japanese Government, and further to obtain the information from the Consulate, if he has the information, whether or not the vessels registered according to the laws of the Japanese Empire are the vessels, only vessels protected by treaties entered into between the government of Japan and any other foreign governments. Now, the last inquiry, the information may not be in the hands of the Japanese Consul. I do not know. I have had no opportunity to interview him. And there is also the further possible objection that it may be a conclusion which he is not qualified to give. I intended to ascertain from him whether or not he was so qualified.

THE COURT: Well, first of all, may we inquire, is there any dispute as to the fact that the vessel seized was one which at no time had been registered or licensed or documented by the Japanese Government, or as to which the Japanese Government at no time took any action. May we proceed that far?

Mr Schleimer: I will stipulate only that this particular vessel was not registered, licensed or documented by the Japanese Government, but with that stipulation, I wish to add that that is entirely immaterial. We are now concerned by our own laws and not what took place in Japan. Our own laws, as to the effect of our contention.

THE COURT: Well, we recognize, of course, that there is a question of law pertaining to the facts just mentioned. For the present we are endeavoring to ascertain what the record is upon the facts, leaving, of course, to be considered, the question or questions of law. Is there any dispute as to the fact that this vessel did not fly the Japanese flag?

MR. SCHLEIMER: The testimony shows that it did not fly any flag. That has been testified to by Mr. Tomikawa. If your Honor cares to see the transcript, I have it here.

THE COURT: Well, there is no need of retracing our steps if it is agreed that the vessel did not fly any flag.

MR. CHICHESTER: That is agreed.

MR. SCHLEIMER: Yes, it is.

THE COURT: Possibly that is the witness.

MR. CHICHESTER: We may be able to simplify the matter by proceeding with the witness and disposing of the witness in that manner.

MR. SCHLEIMER: Yes.

THE COURT: Well, now, let us see how far we can make progress before calling the witness.

MR. CHICHESTER: If I may suggest, your Honor, first I will accept the part of the stipulation offered by Mr. Schleimer, that the Patricia was never registered, enrolled, licensed, or documented, or was given any other document in lieu of those documents by the Japanese government. Is that the extent of your stipulation, Mr. Schleimer?

MR. SCHLEIMER: Substantially, it is. I did not use the words "any other document." I just limited myself to "it was not enrolled, documented or licensed."

MR. CHICHESTER: Well, I wanted the stipulation because I do not know what words the Japanese language might have to encompass all of those words, and I intended that all of the words which we have in the English language be covered to include documenting of any kind of any such boats because I do not believe that any such document was given by the Japanese Government to this boat.

THE COURT: Well, this might clear up the matter. Is it claimed by the claimant that the Japanese Government issued any license, or document, or number, or paper of any kind with respect to this boat?

MR. SCHLEIMER: May I be permitted to simplify this, your Honor, in my own way? I will admit, if the Court pleases, that outside of the numbering of this vessel which was done at San Pedro, no other Government or body had anything to do in numbering or enrolling or registering this particular vessel.

THE COURT: Or licensing it?

MR. SCHLEIMER: Including that, your Honor.

THE COURT: Or issuing any document in respect to it?

MR. SCHLEIMER: That is correct.

MR. CHICHESTER: That is agreeable.

MR. SCHLEIMER: But your Honor will recall that I still contend that that is irrelevant and immaterial.

THE COURT: Yes, the Court understands that there is still open the question of law as to what is the legal effects of the facts.

MR. SCHLEIMER: That is correct.

MR. CHICHESTER: I think possibly—

MR. SCHLEIMER: I think that covers it, that covers the whole thing.

MR. CHICHESTER: I don't think it covers the whole thing. If I may call the witness for one or two questions as to the conclusions which I mentioned to your Honor, which he may or may not be able to give?

MR. SCHLEIMER: Well, as to that, we might as well take that up now because I shall object, that is calling for expert testimony involving the construction of the law of Japan.

THE COURT: Well, of course, it would be necessary to lay the foundation to ascertain whether or not this witness is qualified to answer it.

MR. SCHLEIMER: I doubt whether he would be qualified.

MR. CHICHESTER: I can find out.

THE COURT: Yes.

MR. CHICHESTER: I will call Mr. Ozawa.

(Testimony of Kakichi Ozawa)

KAKICHI OZAWA

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

In Answer to MR. CHICHESTER:

I am vice consul of Japan. My office is 620 Chamber of Commerce Building, Los Angeles. I have been engaged as the vice-consul of Japan in America about one year and a half. I was the attache of the Japanese Embassy at Washington, D. C. I was transferred here about one year and a half ago. I have been attache of the Japanese Empire at Washington, D. C., about one year and a half. Prior to that I was in the service of the Foreign Office in Tokio for more than a half a year. After my graduation at the Japanese University I entered the Foreign Office and at the same time I was appointed as an attache of the Japanese Embassy. I am a graduate of the Tokio Imperial University I did not study all laws but I studied the political Department of the Tokio Imperial University. I only studied the Civil Code and the Criminal Code of Japan. Political Science. The course of the University was three years.

THE COURT: Well, subsequent to your graduation from the University have you devoted any time to the studying of the laws of Japan with reference to the registry or licensing or documenting of vessels?

A No, not at all.

Q And by your answer, do you mean that you do not know what the law of Japan is with reference to

(Testimony of Kakichi Ozawa)

the licensing, or the registering or documenting of a vessel?

A No, I do not know.

Q Have you produced some records here?

A Yes.

Q And what is the nature of the records you have produced?

A I have brought here the laws concerning the Japanese ships published by the Bureau of Ships of the Department of Communication of Japan.

Q You know that that is an official publication?

A Yes, an official publication.

Q Of the Japanese Government?

A Yes.

BY THE COURT: Well, before the Court rules upon it, may we ask the gentlemen to allow the Court to examine the book?

A Yes.

Q It is evidently written in the Japanese language?

A Oh, yes.

Q THE COURT: So that prevents the Court from reading it. Well, now, have you turned to a particular page here?

A Oh, no.

Q THE COURT: Well, now, have you made some examination of this book with reference to what it contains on the subject of the registry or the licensing or the documenting of vessels?

MR. SCHLEIMER: Will your Honor permit me to interpose an objection to the question of the Court?

THE COURT: Yes.

(Testimony of Kakichi Ozawa)

MR. SCHLEIMER: I respectfully object to the question on the ground that the witness is not qualified to answer the question placed by the Court.

THE COURT: It occurs to us that there is a distinction between knowing the law of the country and stating whether or not a person has read a particular book or any portion thereof. Our question seeks to elicit information which strikes us any University graduate, whether he be learned in the law or not, can answer whether or not he has read a book on the particular subject, can answer whether or not the subject matter which he has read pertains to one or another topic. One need not be licensed to practice law to be able to say that he has read a book purporting to deal with the subject matter of the law of torts, for example, and in substance that is the purport of the Court's inquiry, namely, has this witness read from the book that he has before him in which the witness has testified is a part of the official publications of the Japanese Government, whether in that book he has read anything pertaining to the subject matter of the registering, the licensing or the documenting of vessels by the Japanese Government. For that reason we hold that the objection is not well taken. It is overruled and you may have an exception.

BY THE COURT:

Q Have you read any part of this book?

A Oh yes, only the part about the registration of Japanese vessels.

Q Well now, will you turn to that part of the book that you read on that subject?

A Yes sir.

(Testimony of Kakichi Ozawa)

Q On what page is it found?

A Page 1 and page 2.

Q Pages 1 and 2?

A Yes.

Q Will you read from the book the passage or passages to which you have referred?

MR. SCHLEIMER: I respectfully object to it upon the ground that it is irrelevant and it is incompetent. We have conceded, may it please the Court, certain facts, and hence this is entirely immaterial.

THE COURT: It may be immaterial, but to our mind the only way to determine whether or not it is immaterial is to learn what, if anything, the law of Japan says upon the subject.

MR. SCHLEIMER: We have admitted the fact, Your Honor, that this vessel has not been enrolled, has not been documented, and has not been licensed in Japan. This becomes irrelevant and immaterial to the issue.

MR. CHICHESTER: We submit, your Honor, we do not know whether it is material—

THE COURT: May we enquire, counsel, do you know what this book says upon the subject?

MR. SCHLEIMER: I never saw the book and do not know anything about it.

THE COURT: Well, we think the Court at least ought to find out what the book does say upon the subject and then determine whether or not it has any bearing upon our problem. The objection is overruled.

MR. SCHLEIMER: May we have an exception, your Honor?

THE COURT: Yes.

(Testimony of Kakichi Ozawa)

BY THE COURT:

Q Now, Mr. Ozawa, will you read the passage or passages to which you have referred? Will you just read it slowly?

A I must admit that I read English poorly, so I must take a little time.

THE COURT: That is quite all right.

A The article 5 of the law of vessels, says that the owner of Japanese ships must register in the original book of vessels at the governmental office of the port which has the jurisdiction of the port. I want to refer to another article, article 8. The name of the Japanese vessels cannot be changed—

THE COURT: You say can not?

A Can not, can not be changed without permission of governmental office of the port. That is all. And I have brought here the indicia of all Japanese vessels published by the Department of Communication of Japan.

Q Now under what date is that book published?

A This book was published in 1929 by the Department of Communications.

THE COURT: Does the record show that the vessel in question was owned by an American citizen prior and up to March 18, 1932?

MR. SCHLEIMER: Does your Honor refer to the record in this case, or the record of the Collector of Customs?

THE COURT: Well, our first question was as to the record in this trial? If not, can we cover the matter by stipulation?

(Testimony of Kakichi Ozawa)

MR. SCHLEIMER: We have the entire record here of the history of the vessel. We have got it right here.

THE COURT: From your examination, what does that record show?

MR. SCHLEIMER: The record shows that it was built in the United States for a Japanese citizen. That certain cards that are in court were signed by the original owner, the Japanese, and are filed with the Collector of Customs showing that it was owned by a Japanese citizen. There are three such cards, showing the names of the owners right up to the present, to my client whom I represent. Also, the record shows that the prior owners paid to the government light money.

THE COURT: Paid what?

MR. SCHLEIMER: "Light money", that is under section 128 of chapter 46 of the U. S. C. A. Called "light money", which I presume means for maintaining the lights along the coast. The section reads, "light money". It also indicates, the statute also indicates that the Government can only collect light money from vessels owned by foreigners and the Government cannot collect light money from vessels owned by citizens of the United States. The record shows and the books show which are in the office of the Collector, that this is a Japanese vessel, not an American vessel; an American built Japanese owned vessel.

THE COURT: Now what does the record show as to when the vessel was built?

MR. SCHLEIMER: In 1924.

THE COURT: In 1924?

(Testimony of Kakichi Ozawa)

MR. SCHLEIMER: And the name of the builder, I believe, is entered there, and the name of the owner for whom it was built.

THE COURT: Now, does the record show that the boat was always known under the name of the Patricia?

MR. SCHLEIMER: Yes, your Honor, and always under that number of 970-A, from the beginning, the very beginning.

MR. CHICHESTER: We think the best evidence of that is in the record, your Honor.

MR. SCHLEIMER: Well, I am telling your Honor—

THE COURT: Well, if counsel can save us the time and tell us what the record recites—

MR. SCHLEIMER: I am ready to show it to you. There is no question. I have subpoenaed these records.

Q BY THE COURT: Now, may we ask you, Mr. Ozawa, this publication of the Japanese Government under date of 1929—

A Yes.

Q —is a part of the official publications of your Government?

A Yes.

Q And is that record published in such form or manner as to indicate the names of the owners of vessels or the names of the vessels and to whom the same have been registered, or what is the information, the character of information, disclosed by that book?

(Testimony of Kakichi Ozawa)

A This book includes the number and tonnage and owner and the port of the vessels.

Q. The record is kept according to the name of the owner?

A Oh, yes.

Q BY MR. CHICHESTER: The name of the owner in this case is Toychi and his last name is Tomikawa.

MR. SCHLEIMER: I don't recall how he spells it, but I think it is T-o-c-h-i.

THE COURT: Well, may we ask, is the witness here from the office having charge of these Government records?

MR. CHICHESTER: Yes, your Honor. Mr. Metcalf.

MR. SCHLEIMER: Mr. Metcalf is right here. He has the original records.

THE COURT: You might be sworn and perhaps we can shorten this examination. We might interrogate Mr. Metcalf for a moment or two prior to a possible further interrogation addressed to the Consul.

MR. SCHLEIMER: So I will understand, your Honor suspends with this witness for the moment?

THE COURT: Yes, you can remain in that chair for a moment. Mr. Metcalf can take another chair there.

(Testimony of Carl O. Metcalf)

CARL O. METCALF,

called as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

Q BY THE CLERK: Your name?

A Carl O. Metcalf; M-e-t-c-a-l-f.

BY THE COURT:

Q Mr. Metcalf, what position do you hold with the Government?

A Chief Clerk of the Marine Department, United States Customs, at the Port of San Pedro.

DIRECT EXAMINATION

In answer to MR. SCHLEIMER:

A At the Port of San Pedro. I held that office since 1916. I have pursuant to a subpoena duces tecum produced certain records. I took these records from the Customshouse records at San Pedro. I have them here now. (Three cards were thereupon produced by the witness.) The signatures K. Uyegi and O. Uyemoto are two persons. On the card July 12, 1924. On application of O. Uyemoto and K. Ujeji or an number for an alien-owned vessel, No. 970-A, was awarded by the office of the Collector of Customs, Port of Los Angeles, on July 12, 1924. That was the first time that that number was awarded to that particular vessel. I could not say the name of the builder, but I think the records show that it was built by Uyeji at the Terminal Boat Shop, Terminal Island, California. This boat was sold to Kioo Agawa, 806 Commercial Exchange Building, Los Angeles, California, bill of sale, no date, and he registered on July 11, 1930.

(Testimony of Carl O. Metcalf)

He gave his name as George Kioo Agawa, 806 Commercial Exchange Building, Los Angeles. That was July 11th. The boat was sold by George Kioo Agawa to T. Tomikawa, bill of sale dated March 13, 1932, and registered in the office of the Collector of Customs on March 18, 1932, to T. Tomikawa, 712 Tuna Street, Terminal Island, California. The meaning of the name on the line "Owner or Master, Shinajaro Hirata". He was the gentleman who registered the boat in the name, presented the bill of sale and registered the boat in the name of George Kioo Agawa. "Master" is what it should have been. We hardly ever scratch it out. In this case and the next case the owner and master was just the same. The answers that I gave are from the records in the office that I produced.

THE COURT: Just a minute. Will you hand this to the witness?

MR. SCHLEIMER: Yes, your Honor.

Q BY THE COURT: What is that record you are now examining?

A This is a light money record for alien-owned vessels built in the United States and operating out of the Port of Los Angeles.

Q BY MR. SCHLEIMER: Will you kindly explain what you mean by "light money"?

A Well, if you will permit me, I will read—

Q You mean, under the statute?

A Yes.

Q Section 128 of U. S. C. A., Chapter 46, is that what you mean?

A Yes. I have got it here some place.

(Testimony of Carl O. Metcalf)

MR. SCHLEIMER: Has your Honor got 46 U. S. C. A.?

THE COURT: No, not here. You may proceed.

A The title of this regulation is "Light Money in Exceptional Cases." It reads as follows: "A duty of 50 cents per ton, to be denominated 'light money' shall be levied and collected on all vessels not of the United States, which may enter the ports of the United States. Such light money shall be levied and collected in the same manner and under the same regulations as the tonnage duties."

Q BY THE COURT: Now, just what is the section reference that you have read?

A This is R. S. 2245, U. S. C., Title 46, Section 128.

MR. SCHLEIMER: It is now called U. S. C. A., 128.

THE COURT: Section 128?

A Yes.

MR. SCHLEIMER: Yes, your Honor.

In answer to MR. SCHLEIMER:

This book is the first record that we had in the light money book of Patricia, which first payment of light money was made on September 26, 1924, in the amount of,—it is in my other book—I think it is \$108.50—in the amount of \$108.50. Now, one dollar of that light money is for five certificates at 20 cents each. 50 cents a ton on 43 net tons would be \$107.50, and five certificates at 20 cents each would be \$1.00 more. That makes \$108.50 which we collected from the owner of an alien-owned vessel.

(Testimony of Carl O. Metcalf)

Q BY THE COURT: Now, what do your records show, if anything at all, as to the dimensions of the boat or the tonnage thereof?

A The records show that the vessel is 71 gross tons and 43 net. And we collect on the net tonnage.

THE COURT: Just a moment. Mr. Reporter, will you read the answer?

(The Reporter thereupon read the last answer to the Court.)

Q BY THE COURT: And do the records show anything about the size? One of those books seems to have some figures in it.

A This one right here, this simply shows, length 80 feet, beam 18 feet; horse-power, 100.

Q Length what?

A 80 feet.

Q The beam?

A 18.

MR. SCHLEIMER: And horse-power 100.

A I might state, your Honor, that I was unable to locate the Admeasurement of this vessel in the files.

MR. CHICHESTER: I have a copy of it, your Honor.

A I think maybe you have got it. Maybe you didn't return it. If you will note, your Honor, that 43 tons at 50 cents per ton is \$21.50 an entry, and then 20 cents for a certificate. That would make \$21.70, and then five times that would be \$108.50.

Q BY MR. SCHLEIMER: And what year was that for?

A Well, the last payment was made March 18, 1932.

Q Now, you issue certificates of payment of the tonnage tax and the light money, do you not?

A Yes, sir.

Q And you keep a copy of each such certificate in your office, do you not?

A Yes, sir.

Q I show you (counting) 1, 2, 3, 4, 5, 6; 6 certificates—

A One of these, I might add, is the 'official receipt.

Q Copy of the official receipt?

A Yes, one of them is a copy of the official receipt and the five other certificates are showing the payment of tonnage tax. The first sheet shows payment No. 1, and then payment No. 2, 3, 4 and 5.

Q You produced them in Court, did you not? I say, you brought them to Court, did you not?

A I brought them here, yes.

Q Where did you take them from?

A I took them away from the records of the Customs House.

Q Those are the duplicates kept in your office?

A Yes, sir, I got those out of the Cashier's office.

MR. SCHLEIMER: I offer those in evidence, your Honor.

THE COURT: Well, is there any need of keeping these?

MR. SCHLEIMER: No, no, just simply to refer to in case it becomes necessary, so we might have them. I just want them identified.

THE COURT: Well, they might be marked as claimant's.

(Testimony of Carl O. Metcalf)

THE CLERK: Exhibit 1.

A They have to go back to the office.

MR. SCHLEIMER: Yes, that is all right. I simply want to show that they were offered and in case it becomes necessary, we can have copies made of them.

THE COURT: These certificates are numbered respectively 424,163 to 424,167, inclusive, and the copy of the official receipt referred to by the witness is designated No. 418,506, and each of these documents bears date March 18, 1932. May it be deemed that the documents have been read into the record and they may be withdrawn and returned to the witness?

MR. CHICHESTER: So stipulated.

MR. SCHLEIMER: I stipulate to that. May I at this time also, if the Court please, offer in evidence these three cards that the witness referred to in his testimony? They may become material.

THE COURT: Well, may we stipulate that the three cards have been read into the record without retaining the documents?

MR. CHICHESTER: So stipulated.

MR. SCHLEIMER: So stipulated. And what number shall we give them?

THE COURT: They don't need any number.

MR. SCHLEIMER: All right, your Honor.

THE COURT: May we inquire of Government counsel, is there any need for reading into the record any portion of this certificate of Admeasurement?

MR. CHICHESTER: I think not. Mr. Metcalf has given the dimensions and the tonnage of the boat, and

(Testimony of Carl O. Metcalf)

that is about the only part of that that I think was necessary.

MR. SCHLEIMER: I would like to see it. I tried to find it and spent nearly half a day yesterday to see if we could find it and I don't know whether this is an original or a copy.

A That is a copy.

THE COURT: Well, there is some slight difference we note here.

A Is it in the length, your Honor?

THE COURT: This certificate of Admeasurement, may it be stipulated the same has been read into the record without leaving the document here?

MR. CHICHESTER: Yes, your Honor.

MR. SCHLEIMER: Yes.

THE COURT: The certificate of Admeasurement bears the notation in the upper left hand corner in type-writing, the word "Alien," which is likewise in quotations. The upper right hand corner—

MR. CHICHESTER: If your Honor desires, if I may interrupt, that may be introduced in evidence. It is a copy and I have no need of it in my files. It is not the original.

Q BY THE COURT: You don't need this, then, do you?

A No, sir.

THE COURT: Well, then, it may be filed and marked as Claimant's next exhibit.

THE CLERK: That is exhibit "B".

(Testimony of Carl O. Metcalf)

MR. SCHLEIMER: What is exhibit "A"?

THE CLERK: The chart, your Honor.

THE COURT: Very well. It may be marked as Claimant's exhibit "B".

MR. SCHLEIMER: May I at this time, your Honor, offer in evidence this page?

A That is a record of light money.

MR. SCHLEIMER: The record of light money and the particular part of that I want to call to your Honor's attention is the entry on top, if I may show your Honor, "Nat.," which I suppose is taken for a short abbreviation of "Nationality of Owner." Is that correct?

A Yes.

Q BY MR. SCHLEIMER: Then "Tonnage," is that right?

A Yes.

Q The abbreviation for "tonnage"?

A "Tonnage year begins."

Q And then the "nationality of owner," and under that column is "Jap.," which I suppose, Mr. Metcalf, "Jap.," I suppose is the abbreviation for Japanese?

A Japanese. "Japanese Oil Screw, Owner, T. Tomikawa, 712 Tuna Street, Terminal Island, California. Tonnage year begins July, 1924. Amount, \$108.50."

Q BY THE COURT: Now, that is an entry appearing in what book?

A In the record of light money on alien-owned vessels.

Q And you are reading from what page of that book?

(Testimony of Carl O. Metcalf)

A It has no page, but it is the first page under "P," the letter "P".

Q And it is a record kept under the name of the boat?

A Yes, sir. The number is also there, but we keep it under the name.

MR SCHLEIMER: As your Honor will note, the number is printed.

A "970-A. Oil Screw Patricia, 43 net, Japanese, T. Tomikawa, 712 Tuna Street, Terminal Island, California."

Q BY THE COURT: The Record there entered is to the effect that the owner of the boat is a Japanese subject?

A Yes, sir. I might add, your Honor, that this vessel has never been registered otherwise than by Japanese ownership.

MR. SCHLEIMER: May I at this time also offer in evidence the book produced by this witness?

Q BY MR. SCHLEIMER: What do you call this book?

A That is the same thing only it is an older book. That is the first entries of the light money on the Patricia, 970-A.

MR. SCHLEIMER: I would like to have that marked for what it is worth.

THE COURT: Well, let the witness read it into the record.

Q BY MR. SCHLEIMER: All right. Read it right in from whatever record you have there.

A Reading from the Record, "Alien-owned vessels, tonnage tax and light money."

(Testimony of Carl O. Metcalf)

Q What page?

A First page of letter "P" in the index. "Vessel Patricia, No. 970-A, net tonnage, 43, Jap."

Q What does that stand for, "Jap."?

A That means that is the nationality of the vessel, as we classify it. I might add if it is an Austrian owned vessel, we class it as an Austrian vessel, Portuguese, Portuguese vessel.

Q And in this instance you classed it as a Japanese vessel?

A Yes, sir.

Q All right; proceed further.

A "Owners K. Uyeji and O. Uyemoto, Japanese, post-office box 111, Wilmington, built by (blank), at Terminal Island Boat Shop, Recorded July 12, 1924, length, 80 feet, beam 18 feet, horse-power, 100. Tonnage year begins July, 1924. First payment of tonnage or light money made on September 26, 1924, all five payments paid at the same time. Total amount, \$108.50.

Q And the tonnage and the light money was paid on this vessel from 1924 up to—

A 1932, March, 1932, was the last payment. There is no other payment due until March, next year, now—there is a payment due now.

Q This month?

A That is, providing the vessel is operating. I might add that these payments are due, your Honor, on each entry of the vessel for five different entries, but on account of the inconvenience to which it puts masters and owners of these vessels to come in every trip, why, we generally collect the total amount upon one entry. That

(Testimony of Carl O. Metcalf)

allows them to go in and out whenever they please during that tonnage year.

Q Does your office collect light money from vessels owned by American citizens?

A No, sir.

Q That is under your regulations and under the statute, is that correct?

MR. CHICHESTER: That is objected to as calling for a conclusion of the witness and a matter of law entirely.

THE COURT: There hardly would be any dispute about the law not authorizing the collection of light money on vessels owned by citizens of the United States. Now, is there any other testimony to be elicited from this witness, Mr. Metcalf?

MR. CHICHESTER: May I ask this one question?

CROSS EXAMINATION

BY MR. CHICHESTER:

Q You say five times this light money is taxed. Now, is that the maximum that can be taxed against this vessel?

A Yes, sir.

Q So that it may come and go as it pleases?

A Yes. He is required to make five payments, that is, if he enters the Port of Los Angeles five different times a year he is required to make five payments, and we have always collected the total amount upon one entry and that saves them the trouble of coming in and making the payment at five different times, five different payments.

(Testimony of Carl O. Metcalf)

Q The card you refer to has Shinajaro Hirata as the master of the vessel, showed him to be the master on that date?

A That is the first registration, I think. That was dated July 11, 1930.

Q Was he the master when the boat was transferred to Tomikawa?

A I couldn't say.

Q Anything to show?

A We have no records as to that.

MR. CHICHESTER: No records. That is all.

A All right.

REDIRECT EXAMINATION

BY MR. SCHLEIMER:

Q These three cards of ownership, as I would call them, that you produced here and the two books regarding the tonnage and light money are the only records that are kept in your office regarding this particular vessel with the exception of the—

A Admeasurement.

Q The Admeasurement, is that correct?

A Yes, sir.

Q Has this particular vessel ever been registered in your office as an enrolled or licensed or documented vessel?

A No, sir, it has not.

Q It has not?

A No.

Q Why not? Do you know?

A Being alien-owned—

(Testimony of Carl O. Metcalf)

MR. CHICHESTER: That is objected to as immaterial and argumentative.

Q BY MR. SCHLEIMER: Well, he can answer that. We will just simply have to call his Honor's attention to it, and he can give it to us in a second.

MR. CHICHESTER: May it please the Court, it is calling for a conclusion which is entirely based upon the law of this case, why the vessel was or was not registered, which is not within the witness' knowledge.

THE COURT: Well, it really would be a statement of the witness' conclusion, but at any rate, as we understand the matter, the witness having answered that this boat was never registered or enrolled, it is the contention of the claimant that the reason for that absence of enrollment or registry is because the laws of the United States do not permit the same.

MR. SCHLEIMER: Yes, that is correct.

MR. CHICHESTER: It is a matter of law.

MR. SCHLEIMER: That is correct. If your Honor will pardon me a second?

Q BY MR. SCHLEIMER: Has there been any certificate ever issued to the owners, the prior owners, of Toychi Tonikawa as to the numbering of this vessel?

A Certificates?

Q Yes, any certificates ever been issued of any kind?

A No, simply the award of number.

Q That is all?

A That is all.

Q No other certificates?

A No.

(Testimony of Carl O. Metcalf)

Q Well, the award of the number was simply entered on the cards; there was no certificate issued?

A Well, there was a little certificate issued which shows the number awarded and how to place it on the boat.

Q Have you got a form of that here?

A No, I have not.

Q Well, I will show you this. This is a copy. Is that what you refer to?

A Yes, sir.

Q Mr. Chichester?

MR. CHICHESTER: I think I have the original.

MR. SCHLEIMER: You have got it all. We were looking for it all afternoon.

A That is why we could not find it.

Q No wonder you could not find it. He probably got that from the boat, the original. This is the certificate you refer to?

A Yes, sir.

MR. SCHLEIMER: I offer that in evidence.

A (Continuing) Yes, T. Tomikawa.

THE COURT: The same may be marked Claimant's exhibit next in order.

THE CLERK: Exhibit C.

THE COURT: You have no objection, Mr. Chichester, to it going in? Pardon me just a moment.

Q BY MR. SCHLEIMER: Is that your signature?

A Yes, sir.

Q At the bottom of it?

A Yes, sir.

(Testimony of Kakichi Ozawa)

Q That shows that this certificate was issued by you?

A Yes.

THE COURT: It may be marked exhibit C.

THE CLERK: Exhibit C.

THE COURT: Is that all of Mr. Metcalf?

MR. SCHLEIMER: Yes, your Honor.

MR. CHICHESTER: That is all, Mr. Metcalf.

THE COURT: Now, just a moment before you leave the room, so as to complete whatever there may be to these records.

KAKICHI OZAWA,

recalled as a witness on behalf of the Government, being previously duly sworn, testified further as follows:

In answer to THE COURT: I examined the publication issued by the Japanese Government under date of 1929, for the purpose of ascertaining whether there is any entry therein with reference to a boat owned by T. Tomikawa. It is arranged in the alphabetical order of the name of the owner. In this book there is no name of Patricia. It has no name of Patricia.

REDIRECT EXAMINATION

In answer to MR. CHICHESTER: The Japanese Government assumes responsibility for the vessels named in that book.

In answer to THE COURT: I did not particularly study. I made no special study concerning the matter. Other rules of our Government must make protection of the Japanese subject and the Japanese vessels when they are out of the country.

(Argument.)

(Testimony of Kakichi Ozawa)

In answer to THE COURT: There is a legal advisor with the Japanese Consulate. His name is Mr. Nimmo. He is the legal advisor to the Japanese Consulate in Los Angeles. He is an American lawyer. He is an American.

(Argument.)

RE-CROSS EXAMINATION

In answer to MR. SCHLEIMER: This book contains all Japanese vessels registered in the Japanese Ports regardless of the tonnage. You know, to be called Japanese ships, the ship must be registered at some Japanese port. A ship only owned by Japanese subjects does not mean Japanese vessels. This book does not contain vessels that are owned by Japanese in foreign countries. This book only contains vessels that have been registered, licensed and documented by the Government of Japan. I have no translation of the book of laws that I have produced here today. I translated literally.

MR. SCHLEIMER: That as all, your Honor.

MR. CHICHESTER: That is all.

THE COURT: It occurs to us the witness has on cross examination possibly answered Government counsel's query.

MR. CHICHESTER: I think so, your Honor.

THE COURT: That is all.

MR. SCHLEIMER: Did you say you think so? I did not hear that.

(Testimony of Kakichi Ozawa)

THE REPORTER: That is what I understood him to say, "I think so."

THE COURT: Now, the Court has this observation to make: As we said on a prior occasion, we are inclined to the view that under the decision rendered by the United States Supreme Court under date of January 23, 1933, in the case entitled "Frank Cook, Petitioner, vs. the United States of America," that this vessel, if an alien vessel, having been seized more than one hour's sailing distance from shore, and as we understand it, that is not disputed?

MR. CHICHESTER: No, your Honor.

THE COURT: Was unlawfully taken, or would be regarded as unlawfully taken into custody by Agents or employes of the United States. Hence, there remains for consideration the question, Is this vessel to be regarded as an alien boat under the circumstances disclosed by the evidence presented?

The Court finds itself very much in doubt upon that question and is inclined to believe that the laboring oar, so far as convincing the Court is concerned, still rests with the Government.

MR. CHICHESTER: I did not understand that, your Honor.

THE COURT: Read it.

(The Reporter thereupon read the last paragraph of the Court's statement.)

THE COURT: These records produced from the Customs Office are, to say the least, somewhat persuasive, for example, to the extent of disclosing that one branch of the Government has treated the vessel in question as a foreign boat as one, subject, at least, to the burdens of a foreign vessel, and the question naturally presents itself, the Government in one branch having construed the facts pertaining to the ownership, or, if you please, the origin of this boat, as being a foreign vessel, and hence, subject to the burdens imposed upon vessels of that character, have we not at least persuasive reasoning that the construction thus placed upon the boat by the Customs Service, by men presumably qualified and experienced in these matters may be the correct interpretation? Apparently, the chief, if not the sole, basis for the Government's contention here that the United States, rather than the Government of Japan, has jurisdiction, arises over the course of conduct of that very branch of the service in numbering the boat, and which course of conduct that branch of the service has construed to be the numbering of an alien vessel. In other words, as we understand the Government's position, in the light of this recent decision of the United States Supreme Court, the only basis for asserting jurisdiction here arises out of the circumstances connected with the numbering of this vessel by the Customs Department. When we come to inquire into the records of that department, we find that in so dealing with this boat their activities were with the view of deal-

ing with a foreign vessel and not with a vessel either belonging to a citizen of the United States, or registered or licensed under the laws of the United States, or amenable to its jurisdiction, except to the same extent and no further than any other alien vessel. We mention all these considerations at the present time in order that Government counsel may be apprised of the trend of thought on the part of the Court and indicate the point respecting which any additional authority, if presented, should be directed. At this stage, may we inquire of Government counsel, have we in substance, at least, stated the Government's position?

MR. CHICHESTER: Yes, your Honor. I think that the Court and Government counsel are entirely in accord on the questions to be covered by the law, and I think we are in position to answer those questions at such time as your Honor cares to hear from us.

THE COURT: Well, it is now one o'clock and we can take it up this afternoon, say at 2:30.

MR. CHICHESTER: That is agreeable, your Honor.

MR. SCHLEIMER: That is satisfactory, your Honor.

THE COURT: Recess until that hour.

(Whereupon, at 1:00 o'clock P. M., a recess was taken to 2:30 o'clock P. M.)

LOS ANGELES, CALIFORNIA, FRIDAY,
MARCH 24, 1933. 2 o'clock P. M.

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MR. CHICHESTER: May it please the Court, the situation as I see it now, from our session this morning, and from the evidence we have taken, it is a question of determination as to whether or not the Vessel "Patricia" is a vessel—is a Japanese vessel, is the first point, and as to the second point, whether it is subject to the protection of the treaties between the United States and Japan. As to the second point, I invite your Honor's attention to the treaty relied upon by counsel in his brief heretofore referred to. It is the familiar 12 mile limit—that is the name used by counsel for that treaty with respect to the coast of the United States, against foreign vessels importing intoxicating liquors, smuggling them into the United States. That treaty is found in volume 46 Statutes at Large, Part 2, beginning at page 2446.

THE COURT: Just a moment. May we have, Mr. Reporter, that reference?

(Thereupon the Reporter read the reference last above.)

MR. CHICHESTER: I desire at this time to call your Honor's attention to what to me appear to be the pertinent parts of the treaty with respect to this vessel. The Treaty is by the President of the United States of America, and the proclamation is in the usual form, naming the contracting parties as the United States of America and the Empire of Japan by their duly authorized officers. Article 1 provides "The high contracting parties

declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outwards and measured from low-water mark constitutes the proper limits of territorial waters."

Article 2 provides: "(1) The Japanese Government agree that they will raise no objection to the boarding of private vessels under the Japanese flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions, in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be *initiated*."

There is a limitation placed upon that Article II as to the boarding of Japanese vessels, and that is that the distance of such boarding is limited to an hour's cruising time, and depending upon the speed of the vessel being pursued, that is, assuming there is a pursuit. In this case, the speed of the "Patricia" is $7\frac{1}{2}$ to 8 knots an hour, and I believe from the facts we can agree it is within an hour's *cruising* time, because the evidence shows it was seized $10\frac{1}{2}$ miles from the coast of the United States. Of course, if the Patricia as a Japanese vessel is within the protection of this treaty, then I believe counsel's point as to the jurisdiction is well taken under the *Mazel Tov*, decided in *Cook vs. the United States*. However, it is our contention that the "Patricia" in the first

place is not a Japanese vessel, and in the second place, even assuming that under the cases which counsel has cited—*Hallock vs Jenks*, I believe, is one of them—under that line of authority, that the nationality of a vessel is determined by her ownership, even assuming that this is a Japanese vessel under that theory, it is not within the protection of this treaty.

I invite your Honor's attention again to page 2449 of the same volume of Statutes at Large—volume 46—

THE COURT: What page?

MR. CHICHESTER: Page 2449. At the conclusion of the treaty we find on page 2449, "Exchange of notes". One is from the Japanese Ambassador to the Secretary of State, dated May 31, 1928, and there is a memorandum included with it as an inclosure. The one to which I desire to invite your Honor's attention to is the note of May 31, 1928, from the Secretary of State to the Japanese Ambassador.

THE COURT: Mr. Reporter, read that last statement.

(Thereupon, the Reporter read the last statement of counsel.)

MR. CHICHESTER: And I may say, your Honor, that this treaty was made effectual as of January 16, 1930. This note, your Honor, preceded the execution, final execution of the treaty. The pertinent part is the memorandum included with this last-mentioned note from the Secretary of State to the Japanese Ambassador. It reads, "It is understood—1. That the term 'private vessels', as used in the Convention, signifies all classes of vessels other than those owned or controlled by the Japanese Gov-

ernment and used for Governmental purposes, for the conduct of which the Japanese Government assumes full responsibility." That is the only part of that memorandum which appears to be pertinent to our question here. In view of that explanation—

THE COURT: Just a moment. Will you read again the part that you have quoted?

MR. CHICHESTER: From the treaty or from the memorandum?

THE COURT: From the memo.

MR. CHICHESTER: "It is understood—1. That the term 'private vessels,' as used in the Convention, signifies all classes of vessels other than those owned or controlled by the Japanese Government and used for Governmental purposes, for the conduct of which the Japanese Government assumes full responsibility."

If I may recapitulate, it is my understanding of that—leaving out the Japanese Government vessels, that the term "private vessels," as used in the Convention, signifies all classes of vessels for the conduct of which the Japanese Government assumes full responsibility. The wording "private vessels" is used in Article II. "The Japanese Government agree that they will raise no objection to the boarding of private vessels under the Japanese flag outside the limits of territorial waters by the authorities of the United States"—Now, then, my understanding from the reading of this treaty is that "private vessels"—that term is to be modified by this memorandum; that is, private vessels are those for which the Japanese Government assumes responsibility, and that the private vessels must be under the Japanese flag. Those are two conditions

which must be conceded in favor of the treaty, to its execution, for a vessel seeking its protection. Now, it is our contention that unquestionably there was no flag of any kind on board the "Patricia," nor had she ever displayed a flag, and then it is our further contention that there is no assumption of responsibility on the part of the Empire of Japan for the operations and activities of this vessel. The vessel, according to all of the evidence, was built in the United States, owned by a Japanese in the United States, and from all that we know now, in the case, never was within any port of Japan or within any port of a possession of Japan.

Now, it is my understanding from a reading of this treaty that "private vessels" is to be modified by this memorandum, that is, that the "private vessels" referred to are vessels for which the Japanese Government assumes full responsibility, and, (2), that the private vessels must be under the Japanese flag. Those are two conditions as I construe this treaty which must be precedent to the execution of a treaty in favor of the vessel which seeks its protection. Now, it is our contention that unquestionably there was no flag of any kind aboard the "Patricia", nor had she ever displayed a flag that we know of, and it is our further contention that there is no assumption of responsibility on the part of the Empire of Japan for the operation and activities of this vessel, a vessel, according to all of the evidence, built in the United States, owned by Japanese in the United States, and from all that we know in the case, never within any port in Japan nor within any port of possession of Japan.

I think that description of the vessels to be affected is very important in the construction of this treaty and to show, if it does show, which may be a bit removed, but I think it has some bearing, we have a treaty of 1911 between Japan and the United States which is not on this same subject-matter and I merely refer to it for the purpose of showing the construction of that treaty, or rather, the definition of what they mean by "vessels". It is a treaty referring to commerce and navigation as between the two nations entered into in 1911 for a period of—

THE COURT: Is that of any importance, the duration:

MR. CHICHESTER: No, your Honor, other than this: It ran for a period of years, I think 12 years, from 1911, the extent of this treaty, and it began some 12 years prior to 1911. It is a treaty which, apparently, is renewed every 12 years between the nations respecting commerce and navigation, and I was unable before I came into Court to find the renewal date of 1923, which would be the expiring date of this treaty, bringing it in effect at this time, but at any rate, we have: "Merchant vessels navigating under the flag of the United States or that of Japan and carrying the papers required by their national laws to prove their nationality shall in Japan and in the United States be deemed to be vessels of the United States or of Japan, respectively."

In that treaty, one particular part of it describes vessels to be embraced in the treaty. Now, I think in a like

manner in the treaty under discussion in this case the vessels to be included in that treaty are properly described and with language which is clear, and I think that they include those vessels and those vessels only. I think that they are exclusive in their description. And that the mere fact that a person owns a vessel and happens to be of the nationality of the Japanese Empire though his vessel is not registered under the laws of Japan, does not bring him within the jurisdiction of the laws of Japan of which the treaty is one of their laws. And I have one observation to make which may parallel the observation made by the Court this morning with respect to the activity of one branch of the Government in the handling of this vessel, the registering and the issuance of a number and thereafter regarding it as an alien-owned vessel and regarding it in effect as a foreign vessel. In my opinion, that procedure, that method of handling alien-owned boats, has grown out of the lack of knowledge of the navigation laws on the part of the clerical force which has been given the authority to execute those laws. I have been unable to find any authority for their issuing a number to a vessel owned by an alien. Now, I may be in error on that, because I do not presume to know all the law, but from what I have been able to find, I cannot find any reason why they are permitted under the laws of the United States to issue a number which is, in the case of *Stevens vs. the United States*, which has been held to be a document in lieu of the license or certifi-

cate of registry or enrollment, and which is in effect an authority for the operation of that boat under the protection of the United States laws. And why the clerical force of the Collector of Customs, or anyone else, should have the authority to issue a number to a boat owned by an alien is something that I don't understand. In my opinion, the laws are not sufficient to encompass the alien-owned boat. And when the Collector of Customs does issue a number to this boat, if in fact it is a foreign boat, I think he exceeds his authority, and as your Honor noted the parallel situation was the testimony of the Japanese Vice-Consul that the customs of the Consulate here might not be in accordance with the laws of Japan, and I take as a parallel situation the customs of our own Collector's office in my opinion are not in accordance with the laws of the United States.

(Argument.)

(Short recess.)

(After recess further argument.)

THE COURT: Then the case will stand submitted.

MR. SCHLEIMER: The record shows that the "Patricia" is on Monday's calendar. I suppose it will not be on now?

THE COURT: No, because it stands submitted.

(Whereupon, at 5:30 o'clock P. M., the hearing in the above matter was adjourned.)

Minute Order, Judge Hollzer's Calendar, March 30, 1933

It appearing that the vessel involved herein was seized at a point between ten and eleven miles from the nearest shore of the United States, and that the maximum speed which said vessel is capable of attaining is and was not exceeding eight miles per hour, and it further appearing that said vessel, at all times has been and still is, owned by a citizen and subject of the Empire of Japan, and it further appearing that said vessel was, and is an undocumented boat, having been neither registered nor licensed nor otherwise documented under the laws of the United States, and it further appearing that the number allotted to said vessel by the Customs Department was given to said boat as an alien vessel, owned and operated by a subject of the Empire of Japan, and that said vessel was subjected to and required to pay "light" taxes at all times since its construction, the Court finds said vessel was seized in contravention of the treaty entered into between the United States and Japan.

IT IS THEREFORE ADJUDGED that the order heretofore made denying the motion of the respondent to quash and dismiss the proceedings herein is vacated, and the libel against said vessel, its equipment and cargo, is dismissed.

Counsel for respondent will prepare and serve a decree in conformity herewith. An exception is allowed the libelant.

(See Frank Cook vs United States of America, decided by the Supreme Court of the United States January 23, 1933)

[TITLE OF COURT AND CAUSE.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW.

This cause came on to be further heard, before the undersigned, without a jury, on March 24, 1933, Mr. John R. Layng, United States Attorney, and Mr. Frank M. Chichester, Assistant United States Attorney, appearing for libelant, and Mr. Max Schleimer appearing for respondent, and additional evidence, both oral and documentary, was introduced, and the Court being fully advised in the premises, and the cause having been submitted to the Court for decision, and the Court having made a minute order on March 30, 1933, directing judgment to be entered in favor of the respondent, the Court now makes its Findings of Fact and Conclusions of Law as follows, to wit:

FINDINGS OF FACT.

I.

It is true that the oil screw vessel known as "Patricia", with a cargo of assorted intoxicating liquors on board, was seized by agents of the United States Coast Guard, Section Base No. 17, on March 23, 1932, on the high seas at a point between ten and eleven miles off the nearest coast of the United States of America.

II

It is true that after the said seizure, the said agents towed the said oil screw vessel "Patricia" to said Base in the Harbor of Los Angeles, State of California.

III

It is true that after the said vessel was at the said Base, in custody under said seizure, the Collector of Customs of the Port of Los Angeles, State of California, District No. 27, adopted the aforesaid seizure made by said agents of the United States Coast Guard, Section Base No. 17.

IV

It is true that thereafter the Collector of Customs of the Port of Los Angeles, State of California, District No. 27, caused the said vessel and cargo to be appraised, and that the said vessel, her engines, tackle, apparel and furniture, etc. was appraised in the sum of \$8000.00, and that the said cargo of assorted intoxicating liquors was appraised at a value in the sum of \$17,490.00, total, \$25,490.00.

V

It is true that thereafter, and on or about the 28th of April, 1932, the United States Attorney for this District, upon the instructions and at the request of said Collector of Customs caused this action to be instituted, and caused the issuance of process under which the United States Marshall arrested and attached said vessel "Patricia" her cargo, engines, tackle, apparel, furniture, etc.

VI

It is true that at the time of the said seizure, the said vessel bore No. 970-A.

VII.

It is true that the said vessel was built in the year of 1923, by citizens of Japan at Terminal Island, in the State of California, and for citizens of Japan.

VIII.

It is true that from the time the said vessel was built up to the time that the claimant Toichi Tomikawa acquired title to her, the said vessel was continuously owned by citizens of Japan.

IX.

It is true that on or about March 15, 1932, Toichi Tomikawa, the claimant, purchased the said vessel, and was the sole, exclusive, and the only lawful owner thereof from and after said date.

X.

It is true that on and prior to March 15, 1932, the said Toichi Tomikawa was, and still is, an alien and a citizen of the Empire of Japan.

XI.

It is true that at the time of the said seizures, the said vessel's measurements being 82 feet length, 18.5 feet breadth, 8.75 feet draft loaded, and equipped with a Fairbanks-Morse Engine 1924, 100 Horse Power; and that the maximum speed which said vessel was capable of attaining was 7.9 nautical miles per hour.

XII.

It is true that at the time of the said seizure, made by the said agents of the United States Coast Guard, Section Base No. 17, there was no other vessel of any nature of description alongside of the said vessel "Pa-

tricia", or within sight of her, and that the said vessel "Patricia" could not traverse in one hour from the place of the seizure to the nearest coast of the United States.

XIII.

It is true that the Collector of Customs of the Port of Los Angeles, State of California, District No. 27, allotted the said vessel No. 970-A and entered her in his books as an alien vessel owned and operated by a subject of the Empire of Japan, and that the said vessel was subjected to, and required to, and did pay "light money" and taxes at all times since the said vessel was built.

XIV.

It is true that the said vessel, at the time and place of the said seizure made by the agents of the United States Coast Guard, Section Base No. 17, did not violate any laws of the United States of America by reason of having on board the cargo of assorted intoxicating liquors.

XV.

It is not true that the said vessel "Patricia", at the time of the said seizures, and prior thereto, or at any time, was an "American" vessel.

XVI.

It is not true that the said vessel, on or about March 23, 1932, violated the provisions of Section 4377 R. S., 46 U. S. C. A. 325, and thereby became forfeited to the United States of America.

XVII.

It is not true that the failure of the master Toichi Tomikawa to produce a manifest at the time of the said seizure violated Section 584 of the Tariff Act of 1930, 19 U. S. C. A. 1584, and thereby became liable to a penalty of \$500.00; thereby became liable to a penalty equal to the value of the merchandise seized as the cargo of the said vessel, and thereby became liable to the payment of the said penalties under section 594 of the Tariff Act of 1930, 19 U. S. C. A. 1594.

XVIII.

It is not true that Toichi Tomikawa, the claimant, knowingly and fraudulently used the said number allotted to her, No. 970-A, and the said vessel engaged in trade in violation of Section 4189 R. S., 46 U. S. C. A. 60, and that because thereof she has become forfeited to the United States of America.

XIX.

It is true that the said seizures were made in contravention to and in violation of the convention between the United States and the Empire of Japan, proclaimed January 16, 1930, U. S. Stat. Vol. 46, pp. 2446-2448.

XX.

It is true that the said libelant has failed to prove by credible evidence the allegations of the libel other than those hereinbefore specifically found as true.

CONCLUSIONS OF LAW.

As Conclusions of Law, from the foregoing Findings of Fact, the Court makes the following:

A.

That from the time the said vessel "Patricia" was built, and up to and including the said seizures, she was an alien-owned and American-built vessel.

B.

That by the collection from said vessel of light money and taxes, and by the entries in the books of the Collector of customs of said District of the said vessel Patricia as an alien-*own* Japanese vessel, the libelant well knew at the time of the said seizures, that the said vessel was an alien-owned vessel.

C.

That the said seizures were in contravention to and in violation of the convention between the United States and the Empire of Japan proclaimed January 16, 1930, U. S. Stat. Vol. 46, pp. 2446-2448.

D.

That the said seizures were unlawful, illegal, and in violation of law.

E.

That Toichi Tomikawa, the claimant herein, is entitled to judgment as follows, to wit: That the minute order made herein on October 13, 1932, overruling said claimant's objection to the jurisdiction of the Court, and denying his motion to quash the said seizures and to dismiss this proceeding, and to quash the seizures and all proceedings based thereon, be annulled, vacated and set aside; that each count of the libel herein be dismissed

upon the merits; that Toichi Tomikawa, the claimant herein, is entitled to the return of the said vessel "Patricia" and her cargo, engines, tackle, apparel, furniture, etc., which was on board of the said vessel on March 23, 1932, at the time she was seized by the agents of the United States Coast Guard, Section Base No. 17; that upon the service of a certified copy of the decree to be entered hereon, the Commander, or Commandant of the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, State of California, and the Collector of Customs of the Port of Los Angeles, State of California, District No. 27, upon the service of a certified copy of the decree to be entered hereon, shall deliver to Toichi Tomikawa, the claimant herein, or his lawful and authorized agent, or agents, the said vessel "Patricia" and that she be permitted to be taken to a dry dock for the purpose of examining her as to her sea-worthiness, and for repairs, if necessary; that after such examination and repairs, and upon her arrival at the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, California, the Collector of Customs of the Port of Los Angeles, State of California, District No. 27, shall, at his own cost and expense, immediately return the assorted intoxicating liquors, the cargo which was on board of the said vessel "Patricia" at the time of the said seizure, and shall, at his own cost and expense, place same on board of the said vessel "Patricia" and permit her to proceed on the high seas; that the Commander or Commandant of the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, State of California, shall assign a Coast Guard Cutter as a convoy to accompany the said vessel "Patricia" on her said trip in order to protect her from seizure and to

arrive safely at the point of place where she was seized, namely, at the point between ten and eleven miles southwest true from San Mateo Rocks, off the coast of the State of California, and then permit her to proceed on the high seas wherever she may desire to proceed without hinderance, interference or molestation.

The Court hereby orders and directs that judgment be entered accordingly.

DONE in open Court this 28 day of June, 1933.

Hollzer

U. S. District Judge.

Approved as to form, as provided in Rule 44.

Pierson M. Hall,

United States Attorney,

Frank M. Chichester,

Assistant United States Attorney,

Attorneys for Libelant.

Max Schleimer,

Proctor for Claimant and Respondent.

[Endorsed]: Original No. 5567-H. In the United States District Court in and for the Southern District of California Central Division The United States of America, Libelant, vs. America Oil Screw "Patricia", No. 970-A, etc., Respondent. FINDINGS OF FACT AND CONCLUSIONS OF LAW. Received copy of the within Findings of Fact and Conclusions of Law this 9th day of May, 1933 Frank M Chichester Attorneys for Libelant. Filed Jun 29, 1933 R. S. Zimmerman, Clerk By M. R. Winchell, Deputy Clerk Max Schleimer, Att'y for Claimant & Respt., 609-610 Lincoln Bldg., 742 So. Hill St., Los Angeles, Calif. TU 7714.

[TITLE OF COURT AND CAUSE.]

DECREE.

This cause came on to be further heard, at this term, and was thereafter argued by counsel; and upon consideration thereof, it is:

ORDERED, ADJUDGED AND DECREED that the minute order made herein on October 13, 1932, overruling the claimant's, Toichi Tomikawa, objection to the jurisdiction of the Court, and denying his motion to quash the seizures herein and to dismiss this proceeding, and to quash the seizures and all proceedings based thereon, be, and the same hereby is, annulled, vacated and set aside; and, it is further

ORDERED, ADJUDGED and DECREED that each count of the libel herein be, and the same hereby is, dismissed upon the merits; and, it is further

ORDERED, ADJUDGED and DECREED that Toichi Tomikawa, the claimant herein, is entitled to the return of the vessel "Patricia" and her cargo, engines, tackle, apparel, furniture, etc., which was on board of the said vessel on March 23, 1932, at the time she was seized by the agents of the United States Coast Guard, Section Base No. 17, and, it is further

ORDERED, ADJUDGED and DECREED that upon the service of a certified copy of this decree, the Commander or Commandant of the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, State of California, and/or U. S. Marshall and the Collector of Customs of the Port of Los Angeles, State of California, District No. 27, shall deliver to Toichi

Tomikawa, the claimant herein, or his lawful and authorized agent, or agents, the said vessel "Patricia", and that she be permitted to be taken to a dry dock for the purpose of examining her as to her sea-worthiness, and for repairs, if necessary; and, it is further

ORDERED, ADJUDGED and DECREED that after such examination and repairs and upon her arrival at the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, California, the Collector of Customs of the port of Los Angeles, State of California, District No. 27, upon the service on him of a certified copy of this decree, shall, at his own cost and expense, immediately return the assorted intoxicating liquors, the cargo which was on board of the said vessel "Patricia" at the time of the said seizure, and shall, at his own cost and expense, place same on board of the said vessel "Patricia", and permit her to proceed on the high seas; and, it is further

ORDERED, ADJUDGED and DECREED that the Commander or Commandant of the United States Coast Guard, Section Base No. 17, in the Harbor of Los Angeles, State of California, shall assign a Coast Guard Cutter as a convoy to accompany the said vessel "Patricia" on her said trip in order to protect her from seizure and to arrive safely at the point or place where she was seized, namely, at the point between ten and eleven miles southwest true from San Mateo Rocks, off of the coast of the State of California, and then permit her to

proceed on the high seas wherever she may desire to proceed, without hinderance, interference, or molestation, and thereafter the said Coast Guard Cutter shall return to its base.

DONE in open Court this 28 day of June, 1933.

Hollzer
U. S. District Judge.

Approved as to form, as provided in Rule 44.

Pierson M. Hall,
United States Attorney,
Frank M. Chichester,
Assistant United States Attorney,
Attorneys for Libelant.
Max Schleimer,
Proctor for Claimant and Respondent.

Decree entered and Recorded June 29, 1933 R. S. Zimmerman, Clerk, By M. R. Winchell, Deputy Clerk.

[Endorsed]: Original No. 5567-H. In the United States District Court in and for the Southern District of California Central Division The United States of America, Libelant, vs. American Oil Screw "Patricia" No. 970-A., etc., Respondent, DECREE. Received copy of the within Decree this 9th day of May 1933 Frank M. Chichester Attorneys for Libelant. Filed Jun 29 1933 R. S. Zimmerman, Clerk By M. R. Winchell, Deputy Clerk Dock 7/1/33 M. R. W. Max Schleimer, Att'y for Claimant & Respt., 609-610 Lincoln Bldg., 742 So. Hill St., Los Angeles, Calif. TU 7714.

[TITLE OF COURT AND CAUSE.]

MOTION TO VACATE FINAL DECREE AND
FINDINGS OF FACT AND CONCLUSIONS
OF LAW HEREIN.

COMES NOW the libelant herein, United States of America, by its proctors, Peirson M. Hall, United States Attorney for the Southern District of California, and J. J. Irwin and Ignatius F. Parker, Assistant United States Attorneys for said District, and moves the above entitled Court to vacate the final decree entered herein on June 29, 1933, and to vacate the findings of fact and conclusions of law signed by the Court herein on June 28, 1933, and filed in this matter on June 29, 1933.

The said motion is based upon the following grounds:

I

The evidence herein does not support the said findings of fact and conclusions of law and the said judgment entered herein.

II

The said findings of fact and conclusions of law and said judgment under the facts in evidence herein are contrary to law.

This motion will be based upon the files and records on file in the above entitled case and the evidence introduced

therein and upon the Points and Authorities attached hereto.

Dated July 12, 1933.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney

J. J. Irwin
J. J. IRWIN,
Assistant United States Attorney

Ignatius F. Parker
IGNATIUS F. PARKER,
Assistant United States Attorney

Attorneys for Libelant.

[Endorsed]: No. 5567-H District Court of the United States Southern District of California Central Division United States of America, Libelant, vs. American Oil Screw "Patricia", No. 970-A, her engines, tackle, apparel, furniture, etc., Respondent. MOTION TO VACATE FINAL DECREE AND FINDINGS OF FACT AND CONCLUSIONS OF LAW HEREIN; POINTS AND AUTHORITIES Filed Jul 12 1933 R. S. Zimmerman, Clerk By Thomas Madden Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ANSWER TO MOTION TO VACATE FINAL
DECREE AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

COMES now Toichi Tomikawa, claimant herein, and the respondent herein, by their proctor, Max Schleimer, and respectfully oppose the libelant's application to vacate the final decree entered herein on June 29, 1933, and to vacate the Findings of Fact and Conclusions of Law, signed by the Court herein on June 28, 1933, and filed in this matter on June 29, 1933, and respectfully submit to this Honorable Court that said application ought not to be granted, because:

(1). Said application, in effect, is for a new trial, and in the absence of a statute or rule, as here, it cannot be maintained.

(2). The Findings of Fact are supported by an overwhelming amount of evidence, both oral and documentary, and the Conclusions of Law are warranted upon the facts found.

(3). The findings of Fact and Conclusions of Law and the Judgment are not contrary to law.

Said answer to the said motion is based upon the Minute Orders of March 30, 1933, and June 28, 1933, and the oral evidence adduced upon the trial of this matter, and upon the documentary evidence introduced therein.

Dated, July 17, 1933.

Max Schleimer
Max Schleimer,
Att'y for Claimant & Resp't.,
609-610 Lincoln Bldg.,
742 So. Hill St.,
Los Angeles, Calif. TU 7714.

At a stated term, to wit: The February Term, A. D. 1933, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 21st day of August in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable H. A. HOLLZER, District Judge.

It appearing that there is pending herein a motion to vacate the decree herein, and it further appearing that the time to appeal from said decree will likely expire before a decision may be rendered upon said motion and good cause appearing therefor, it is ordered that the findings, conclusions and decree entered herein be and the same are vacated, and the cause continued for further proceedings to the second day of October, 1933, at 2 PM.

At a stated term, to wit: The September Term, A. D. 1933, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 15th day of September in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable HARRY A. HOLLZER, District Judge.

The order heretofore made herein under date of August 21, 1933, is modified in the following respect, to-wit: Said cause is continued for further argument on the merits, with particular reference to the question whether the vessel "Patricia" under libel herein is entitled to the benefits of the treaty with Japan bearing date of March 31, 1928.

At a stated term, to wit: The February Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the 6th day of April in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable Harry A. Hollzer, District Judge.

It appearing that the respondent vessel "Patricia", was built in the United States and within this District; that at all the times mentioned in the amended libel, the respondent vessel was owned by the claimant, one T. Tomikawa, a subject of the Empire of Japan; that at the time of, and several years next preceeding, the seizure of the respondent vessel, said claimant maintained a home and was domiciled in the United States and in this district; that on or about March 18, 1932, on application of said claimant, there was awarded to respondent vessel by the United States Collector of Customs for District No. 27, the number 970-A; that at all times herein mentioned, respondent vessel carried on its stern as the name of the home port of said vessel, the words "Los Angeles"; that respondent vessel was never registered nor licensed nor

documented by the Japanese Government; that at the time of the loading, search and seizure of respondent vessel, it was not flying the Japanese flag, and was not entitled to fly the same; that on or about March 23, 1932, an officer of the United States Coast Guard boarded respondent vessel while respondent vessel was on the high seas, travelling toward the coast of the United States, and within four leagues of said coast, to-wit: at a point between 10 and 11 miles off the nearest coast of the Southern portion of the State of California; that at the time said officer of the Coast Guard boarded respondent vessel, and prior to the search and seizure thereof, said officer requested the person in charge of respondent vessel for the manifest and for the registration papers and was informed that neither any manifest nor registration paper was on board; that upon the failure to produce the manifest said officer of the Coast Guard seized and searched respondent vessel and found on board thereof, a cargo of assorted intoxicating liquors, the appraised value of which cargo amounts to the sum of \$17,490.00; that at the time of said seizure of respondent vessel, the master thereof, in violation of Section 584 of the Tariff Act of 1930 (19 USCA 1584) had failed and refused to produce the manifest in response to the demand of said officer of the Coast Guard, and by reason thereof, the master of respondent vessel has become liable to a penalty of \$500.00, and to a further

penalty to the value of the cargo of respondent vessel, and likewise, respondent vessel had become liable for the payment of said penalties; that at the time of the boarding, search and seizure of respondent vessel, the number 970-A theretofore granted to it was knowingly and fraudulently used for respondent vessel when it was not entitled to the benefit thereof, and at the time last mentioned, respondent vessel was illegally engaged in trade and by reason of such illegal use, respondent vessel, her tackle, apparel and furniture became liable to forfeiture;

IT IS ORDERED that Counts 2 and 3 of the amended libel be sustained, and that a decree be entered in conformity herewith;

IT IS FURTHER ORDERED that Count 1 of the amended libel be dismissed. An exception is allowed to respondent.

Findings and Decree shall be prepared in conformity herewith.

(Section 584, Tariff Act, 1930, 19 USCA 1584; Section 594 of same Act, 19 USCA, 1594; Section 4189, R. S. 46 USCA 60; US vs Davidson, 50 Fed (2d) 517, 520; Malagash Fish Co. vs U. S., 63 Fed (2d) 311, 312; Stephens vs US, 30 Fed. (2d) 286; U. S. vs Coppolo, 2 Fed. Supp, 115, 116 (second column); Arch vs US, 13 Fed (2d) 382, 384 and cases therein cited.

LOS ANGELES, CALIFORNIA.

MONDAY, OCTOBER 2, 1933. 3:15 O'CLOCK P. M.

. . . oOo . . .

THE CLERK: No. 5567-H, U. S. vs. "Patricia."

MR SCHLEIMER: Ready.

MR PARKER: Ready.

THE COURT: This matter went over—let's see—have you got the file there so we can get the wording of the Court's order. (Examining file.)

The Court made an order herein under date of September 15th, as follows: "The order heretofore made herein under date of August 21, 1933, modified in the following respect, to-wit: Said cause is continued for further proceeding in order that the Court may hear further argument on the merits with particular reference to the question whether the vessel 'Patricia' under libel herein is entitled to the benefits of the treaty with Japan, and bearing date of March 31, 1928."

We think counsel appreciates the purport of that order. It was the Court's view that but for the treaty the Government was entitled to proceed as it had done in this cause, that the vessel would avoid the consequences of seizure under the conditions under which seizure took place—or put it this way: That, ordinarily, a vessel captured by the coast guard, under the conditions which existed here with respect to the vessel "Patricia" would be subject to seizure and forfeiture.

However, it was our thought that by virtue of the decision of the United States Supreme Court in the so-called Cook case that this vessel came within the accepted class defined by that decision.

Further reflection, however, has raised the question that the United States Supreme Court, in the Cook case, was interpreting and applying the treaty, in that instance a treaty with Great Britain, the language of which, however, is substantially the same as the language of the treaty with Japan, and the purpose of each of these two treaties was identical.

The Government has advanced the contention that except for such a treaty that it is entitled to proceed in the manner in which that cause has been prosecuted, that the labor is upon the party claiming the benefits of the exception contemplated by the treaty. We think there is considerable force in the Government's contention, and that it is incumbent upon the respondent to show that under the record, as we have it here, this respondent is entitled to the benefits of the treaty made with Japan, and thus be excepted from or relieved of the ordinary consequences of the state of fact such as we found to exist here.

MR SCHLEIMER: May it please the Court, there are two preliminary matters which I respectfully submit should be taken up in advance for disposition: (1) One of the matters is that the order which your Honor stated a minute ago, dated August 21, 1933, was made on the Court's own motion and in the absence of the claimant or his counsel. Therefore, neither of them had an opportunity to take an exception to the ruling, nor did the Court grant the claimant an exception, which is customary to grant when an order is made in the absence of the claimant or counsel. I, therefore, at this time, respectfully

ask—or respectfully take an exception to the ruling, decision and the order made on August 21, 1933, and as modified by your Honor on September 15, 1933. And I also ask that your Honor direct that the exceptions be entered in the minutes of this court nunc pro tunc as of said dates and at the time the said orders were made, in order that the respondent's and claimant's rights be properly protected.

THE COURT: In other words, that an exception be noted as to the respondent both with respect to the order of August 21st and also the order of September 15th?

MR. SCHLEIMER: Yes, your Honor.

THE COURT: That strikes us as merely preserving the respondent's rights, to be heard and to review the Court's ruling.

MR. PARKER: I think that it is so intended.

I would say this, however, that on September 9th counsel filed a written exception in this case to the order of August 21st; that afterwards counsel conferred with me with reference to a modification of the order that was entered on September 15th. Counsel had plenty of opportunity heretofore to enter any exception on the orders, and did as to the first order.

We have no objection to the other.

THE COURT: It occurs that whatever rights the respondent may have to review, the rulings of this court ought to be preserved. Let the record show that exception is allowed the respondent to the order of August 21, 1933, as of that date, and also to the order of September 15, 1933, as of that date.

MR. SCHLEIMER: Now, may it please the Court, at this time the respondent and claimant moves to set aside both of these orders on the ground that it appears from

the record and the file certain matters to which I will presently call the Court's specific attention to. The grounds upon which the motion is now made are as follows:

1. That this Honorable Court inadvertently made the orders, dated respectively August 21, 1933 and September 15, 1933.

THE COURT (Interrupting): What was the first ground?

MR SCHLEIMER: That this Honorable Court inadvertently made the said two orders.

2. That this Honorable Court prematurely made said orders.

3. That this Honorable Court made said orders, with due respect to this Honorable Court, without authority in law and contrary to precedence.

4. That this Honorable Court has already passed upon the precise questions several times before the decree that was entered in this case was made and entered.

5. That the judgment in the case entitled, "In the District Court of the United States, In and For the Southern District of California, Central Division. United States of America, plaintiff, vs. Toichi Tomikawa, et al., defendants, No. 10898-H," is in effect an acquittal of the defendant who is the respondent and claimant in this cause, of the same charges involved in this cause, and is therefore *res adjudicata* in this cause.

6. That this Honorable Court will take judicial notice of the said judgment and the records that are in the file in the case.

7. That the said orders deprive the respondent and claimant of the benefits of the decree filed in this cause,

with due respect to this Honorable Court, without any legal reason therefor.

THE COURT: Do we understand that you have all those things in writing?

MR SCHLEIMER: I have them in sort of a memorandum for my reference. I want to state the precise grounds.

THE COURT: Don't you think it would help both counsel and the Court to have a copy of that rather than ask us to make notes?

MR SCHLEIMER: I have sufficient copies prepared but they were typed just a few minutes before I came here and I didn't have time to go over them carefully. They are subject to any errors or corrections. I hand your Honor a copy and also counsel a copy.

I believe I just got through with the seventh ground, and I have one more.

8. The eighth ground is that the orders deprive the respondent and claimant in this cause of the statutory right of taking an appeal from the decree, and thus deprived them of a substantial legal right, with due respect to this Honorable Court, with no legal cause.

May it please the Court, in order that this Honorable Court may properly pass upon the grounds which I briefly stated, I desire to point out some of the matters which appear in the records and in the file in this cause which, in my humble opinion, are decisive.

These matters are as follows: The court reporter's transcript of the hearing of February 27, 1933, shows that this Honorable Court called counsel's attention to a case decided by the United States Supreme Court. At this time the Court did not mention the title of the case,

but presumably it referred to the case of Cook vs. the United States.

This Honorable Court then stated that there were two main questions in this case, namely: (1) If the vessel "Patricia" be regarded as a foreign vessel, and (2) Was she unlawfully seized because the seizure was made at a point or place more than one hour's sailing nearest the land. This Honorable Court desired further argument thereon.

The court reporter's transcript of the hearing of March 13, 1933 shows that counsel for the libelant made an application in open court to reopen this cause for further proof on those questions, stated by this Honorable Court. I opposed that application on behalf of the respondent and claimant because it was not based on a written application.

The file also shows that thereafter the libelant made a written application in which he stated that he desired to introduce additional evidence in order that the Court may pass upon these questions; that the said additional evidence was to have the Consul of Japan, or his representative, testify as to the laws of Japan, bearing on the said questions.

This Honorable Court, on March 27, 1933, on or about that date—I don't remember exactly the date now—this Honorable Court made an order granting the said application of the libelant.

On March 24, 1933, the hearing was had for that purpose.

THE COURT: Now, I am just wondering, aren't the dates a little mixed? You have the hearing before the order granting it.

MR SCHLEIMER: I said, your Honor, I didn't recall the exact date, but the record will show that. I said that.

On March 24, 1933, a hearing was had for that purpose. The hearing was commenced at 10 o'clock in the morning and lasted until 5:30, as the reporter's transcript shows.

The court reporter's transcript of that hearing consists of 106 pages of testimony and argument, and that at the conclusion thereof the cause was again submitted to this Honorable Court for decision.

On March 30, 1933, this Honorable Court made a minute order in which it directed that judgment be entered in favor of the respondent and claimant, and which stated the reasons therefor and cited the case of Cook vs. the United States, decided January 23, 1933, as authority.

Since then several hearing were had on briefs in which counsel for the libelant argued substantially the same grounds and they were overruled.

May it please the Court, these facts in this cause which I just pointed out show conclusively that the time to appeal did not expire until September 29, 1933; and that when this Honorable Court stated in a minute order of August 21, 1933 that the time to appeal would expire before a decision could have been made, it was obviously an inadvertence, that the point upon which this Honorable Court desires to hear further argument was already passed upon several times by this Honorable Court in different forms before the final decree was entered.

May it please the Court, at this time if you desire any authority for my proposition, I am ready to submit the authority. I rely upon the case of Thomassen vs. Whit-

well, reported in 23, Federal Case No. 13,930; also reported in 9 Ben. page 458.

(Argument.)

MR. SCHLEIMER: I have no objection to that, your Honor.

MR. PARKER: Did your Honor make any disposition of the motion to vacate the minute orders?

THE COURT: We will take that under consideration along with these points on the merits.

THE COURT: The question is now within what time the Government counsel will file the memorandum.

MR. PARKER: So we can get a brief before the Court?

THE COURT: Yes.

MR. SCHLEIMER: May I have the opportunity to answer? He has made a statement in court which I don't agree with.

MR. PARKER: We would like a week or ten days, ten days preferably, your Honor.

THE COURT: Ten days. Then the respondent may have until the 16th to file any additional memorandum, by way of reply only.

MR. PARKER: Thank you.

MR. SCHLEIMER: That means that I could answer his motion—his objection as well as his memorandum?

THE COURT: Yes.

MR. SCHLEIMER: Thank you.

And does the matter stand submitted or will it be up on the calendar again?

THE COURT: No, it will be marked for submission on the 16th, at 2:00 p. m. For submission only. It will be carried on the calendar for that purpose.

MR SCHLEIMER: It will not necessitate our presence?

THE COURT: No.

(Whereupon the taking of argument was concluded.)

...o0o...

LOS ANGELES, CALIFORNIA

MONDAY, OCTOBER 16, 1933 2:30 O'CLOCK P. M.

(Argument, on motions.)

THE COURT: And respecting those two matters, we are contemplating hearing witnesses.

So far as the motion to require Claimant to give additional security for costs is concerned, it occurs to us that since no additional costs are being incurred, that is, none has been since June of this year, pending the decision of the court on the matters that are now being submitted, that motion should be denied, without prejudice, to which renewal may be made at a later date.

THE COURT: We will keep all three motions open. The matter will go over to October 25th, at 2:00 p. m.

(Whereupon the taking of argument in the above entitled case was concluded at 3:40 p. m.)

LOS ANGELES, CALIFORNIA

WEDNESDAY, OCTOBER 24, 1933

3:15 O'CLOCK P. M.

...o0o...

THE COURT: We have on the calendar this afternoon the three motions, and we believe the Government contemplated offering evidence in support of the motions.

(Whereupon the taking of argument in the above entitled case was concluded at 5:05 p. m.)

[TITLE OF COURT AND CAUSE.]

RESPONDENT'S AND CLAIMANT'S REQUEST
TO FIND.

To the

Hon. Harry A. Hollzer,
United States District Court Judge in and for the
Southern District of California, Central Division.

The respondent and claimant herein respectfully asks
Your Honor to make the Findings of Fact and Conclu-
sions of Law herein as proposed by them, and hereto
annexed.

Dated, May 15, 1934.

Max Schleimer
Max Schleimer,
Att'y for Rspt & Claimant,
718-720 Grant Bldg.,
355 So. Broadway,
Los Angeles, Calif. TU 7714.

[TITLE OF COURT AND CAUSE.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW.

This cause came on to be further heard at this term, and was argued by counsel; and upon consideration thereof, the Court now makes its Findings of Fact and Conclusions of Law as follows, viz:

FINDINGS OF FACT.

1.

It is true that in the year of 1924, K. Uyeji and O. Uyemoto, citizens of the Empire of Japan built a vessel at the Terminal Island, California, and named it "Patricia".

2.

It is true that on July 12, 1924, the then Collector of Customs of the port of Los Angeles, California, District No. 27, entered in his book known as "American built and alien owned vessels", that the said vessel was built and owned by the said K. Uyeji and O. Uyemoto, citizens of the Empire of Japan, and thereupon allotted and gave the said vessel the number of "970-A". Thereupon they painted on the stern of the said vessel the said number and the letters "L. A."

3.

It is true that on July 11, 1930, the said K. Uyeji and O. Uyemoto sold the said vessel to George Kioo Agawa,

a citizen of the Empire of Japan, and the then Collector of Customs of the Port of Los Angeles, California, District No. 27, entered the said sale in his said book, and thereupon allotted and gave the said vessel the said number of "970-A".

4.

It is true that on March 13, 1932, the said George Kioo Agawa sold the said vessel to Toichi Tomikawa, a citizen of the Empire of Japan, and the then Collector of Customs of the Port of Los Angeles, California, District No. 27, entered the said sale in his said book, and thereupon allotted and gave the said vessel the said number of "970-A".

5.

It is true that the measurements of said vessel are 82 feet length, 18.5 feet breadth, 8.75 feet draft loaded, and at the time of the seizure hereinafter stated, she was equipped with a Fairbanks-Morse Engine of 1924, of 100 horse power.

6.

It is true that the maximum speed which the said vessel could sail or traverse under her own power, at the time of the seizure hereinafter stated, was 7.9 nautical miles per hour.

7.

It is true that between about July 12, 1924, and March 18, 1932, the said owners of said vessel paid "light money" to the respective Collectors of Customs of the Port of Los Angeles, California, District No. 27, on the basis of 43 tons net, 50 cents per ton, the sum of \$107.50, be-

sides \$1.00 for 5 certificates issued by them of such payment, at 20 cents each, making a total of \$108.50 annually during said period. The said payments were demanded by the said Collectors of Customs, and paid by said owners respectively pursuant to the provisions of Section 4225 of the Revised Statutes of the United States, now known as 46 USCA 128.

8.

It is true that on March 23, 1932, the revenue cutter known as CG-259 of the United States Coast Guard, section base No. 17, in charge of Frederick J. Dwight, Chief Boatswain's Mate, was on the high seas of the Pacific Ocean, in search of a reported capsized vessel, and sighted the said vessel "Patricia", and proceeded towards her. That when he overtook her, he came alongside of her and the said Chief Boatswain's Mate noticed that she was loaded below her water mark, and he ordered said vessel to stop. When she did so, he then placed a seaman first class on board of the said vessel "Patricia", and later he went on board her, without a search warrant or other process issued by a court of competent jurisdiction. That after they were on board her, he opened her hatchways and found that she was loaded with sacks containing spirituous liquors. Thereupon he arrested Toichi Tomikawa, her master, the claimant herein, and her crew, and seized the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything that was on board her at that time.

9.

It is true that at the time the said revenue cutter came alongside of the said vessel "Patricia", she bore on her stern the number "970-A" and the letters "L. A."

10.

It is true that the place of said seizure of the said vessel "Patricia" was between 10 and 11 miles southeast true from San Mateo Rock of San Juan Point, California.

11.

It is true that the place of said seizure was ascertained by dead reckoning running from the position where the said revenue cutter started from the Point of San Clemente Island, California, in search of the reported cap-sized vessel.

12.

It is true that at the place where, and at the time when, the said seizure was made of the said vessel "Patricia", there was no vessel or vessels near her, or anywhere in sight of her.

13.

It is true that the said vessel "Patricia" could not sail under her own power within one hour from said place of seizure to San Mateo Rock of San Juan Point, California, which was the nearest point of land of the United States.

14.

It is true that after the said vessel "Patricia" was seized, the said revenue cutter CG-259 of the United States Coast Guard, section base No. 17, in charge of said Frederick J. Dwight, Chief Boatswain's Mate, towed her to section base No. 17, San Pedro, California, in the Harbor of Los Angeles, California.

15.

It is true that after the said vessel "Patricia" was at the said section base No. 17, San Pedro, California, in

the Harbor of Los Angeles, California, in the custody of the United States Coast Guard under said seizure, the then Collector of Customs of the Port of Los Angeles, California, District No. 27, adopted the said seizure made.

16.

It is true that at the time the then Collector of Customs of the Port of Los Angeles, California, District No. 27, adopted the said seizure, he took into his possession and custody the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything that was on board her. The said cargo consisted of 112 empty oil drums and 1749 sacks each containing assorted spirituous liquors.

17.

It is true that after the then Collector of Customs of the Port of Los Angeles, California, District No. 27, had taken possession and custody of the said vessel "Patricia" and her cargo, engines, tackle, apparel, furniture, and everything that was on board her, he caused its value to be appraised. The said vessel "Patricia" was appraised in the sum of \$8000.00, and the cargo of assorted spirituous liquors in the sum of \$17,490.00.

18.

It is true that thereafter, and on or about April 28, 1932, the then United States *Attorney* for the Southern District of California, Central Division, upon the request and instructions of the then Collector of Customs of the Port of Los Angeles, California, District No. 27, instituted this libel to condemn and forfeit the said vessel "Patricia" and her said cargo, engines, tackle, apparel,

furniture, and everything that was on board her, and caused the issuance of process out of this Court to arrest and attach same, and that the same was arrested and attached by the then United States Marshal in and for the Southern District of California, Central Division.

19.

It is true that at the time and place where the said vessel "Patricia" was seized on the high seas, there was a fog, and that the said vessel was drifting in order to enable its master to ascertain his whereabouts and to get his bearings.

20.

It is true that at the time and place where the said vessel "Patricia" was seized on the high seas, the said Frederick J. Dwight, the Chief Boatswain's Mate of the revenue cutter CG-259 of the United States Coast Guard, base No. 17, or any member of its crew, did not have a search warrant or any other process authorizing him, or them, to go on board of said vessel "Patricia" to search her, or for any other purpose.

21.

It is true that the said Toichi Tomikawa, the master of the said vessel "Patricia", the claimant herein, was, at all times hereinbefore and hereinafter stated, and is, an alien and a citizen of the Empire of Japan, and is incapable of becoming a citizen of the United States under the provisions of Section 2169 of the Revised Statutes of the United States, now known as 8 USCA 359.

22.

It is true that at all the times hereinbefore and hereinafter stated, the domicile of the said Toichi Tomikawa,

the claimant herein, was, and is, in the City of Nishinomiya in the Province of Hyogo, Japan, where he domiciles with his wife and son, and temporarily resided, or sojourned, while in the United States, at Terminal Island, California.

23.

It is true that the Treaty between the United States and Japan, proclaimed April 5, 1911, 37 U. S. Stat. 1504-1509, Article IV among other things, provides that the citizens or subjects of Japan shall have liberty freely to come with their ships and cargoes to all places, ports and rivers in the territories of the United States; that Article XIII, Part One, among other things, provides that the citizens or subjects of Japan shall enjoy the most-favored nation treatment in the territories of the United States.

24.

It is true that the Convention between the United States and Japan, proclaimed January 16, 1930, 46 U. S. Stat. 2446-2448, Article I, among other things, provides that it was the firm intention of the High Contracting Parties to uphold the principle that 3 marine miles extending from the coast line outwards and measured from the low-water mark constitutes the proper limits of the territorial waters of the United States. Article II, among other things, empowered the government of the United States to board private vessels under the Japanese flag outside the said limits of territorial waters for the purpose of ascertaining whether the vessel, or those on board, are endeavoring to import alcoholic beverage into the United States, its territories or possessions, in violation

of its laws, providing such vessel, or vessels, under its own power, can traverse in one hour from the place of such search to the nearest point of land of the United States.

25.

It is true that the said seizure of the said vessel "Patricia" took place on the high seas of the Pacific Ocean outside of 3 marine miles, extending from the coast line outwards and measured from the low-water mark, the limits of territorial waters as agreed upon by said Convention.

26.

It is true that the then Collector of Customs of the Port of Los Angeles, California, District No. 27, had no power, authority or jurisdiction to allot and give the vessel "Patricia" the number "970-A", and that the allotment and giving of said number did not attach to her the same dignity as would have been the case if her owner had been a citizen of the United States.

27.

It is true that the respondent and Toichi Tomikawa, the claimant herein, in due time appeared specially in this libel and made an application to set aside the said seizure, and to vacate and set aside all proceedings based thereon upon the ground, among others, that the said seizure was illegal and unlawful and thereby the Court did not acquire jurisdiction in the premises, for the reason that the ownership of the said vessel determined her nationality, and her owner being a citizen of the Empire of Japan, the nationality of the said vessel was deemed as that of

Japan, and that under said Treaty and Convention the boarding her and seizure was without authority in law.

28.

It is true that the issues raised on said application were duly tried in open court, and the witnesses called by the respective parties herein were duly examined and cross-examined by their respective counsel, and that such proceedings were had thereon that resulted in the making and filing of a minute order overruling said objection.

29.

It is true that on May 4, 1932, the Grand Jury of this Court filed an indictment against the said Toichi Tomikawa, the master of said vessel "Patricia", the claimant herein, and his crew, which indictment is known as No. 10,898-H-CR. That thereafter they appeared specially in said criminal action, and objected to the jurisdiction of this Court, and moved this Court to quash and set aside the said indictment upon the ground, among others, that their arrest at the place aforesaid was illegal, unlawful, and in violation of the said Convention for the reasons, among others, stated in paragraph "27" hereof; that such proceedings were thereafter had that resulted in the making and entry of a minute order denying said application on May 20, 1932; that thereafter the said Toichi Tomikawa, the claimant herein, one of the defendants in said criminal action, duly moved this Court, upon the testimony and proceedings had herein, for a rehearing of said application to quash and set aside the said indictment upon the ground, among others, that said arrest at the said place was illegal, unlawful, and in violation of the said Convention; that such proceedings were duly had upon

said application that resulted in the making and entry of a minute order on April 24, 1933 and judgment was entered on June 20, 1933, quashing and dismissing the indictment in said criminal action; that the time to appeal therefrom has long ago expired, and that no appeal was taken from said order and judgment by the libelant, the plaintiff in said criminal action, and that said judgment is in all respects final and conclusive.

30.

It is true that the said Toichi Tomikawa, the master of the said vessel "Patricia", the claimant herein, who was one of the defendants in the said criminal action, duly requested the Court in this action to take judicial notice of the minute order and judgment made and entered in the said criminal action, and offered to introduce same in evidence in this action, and urged, among other things, that the said minute order and judgment made and entered in said criminal action was a bar in this action against the libelant herein on the issue that the said seizure of the said vessel "Patricia", at the place aforesaid, was illegal, unlawful and in violation of said Convention.

31.

It is true that thereafter such proceedings were duly had in this action that resulted in the making and entry of Findings of Fact and Conclusions of Law and a Decree thereon on or about June 28, 1933, adjudging, among other things, that the libel herein be dismissed upon the merits, and that the said Toichi Tomikawa, the claimant herein, was entitled to the return of the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture,

and everything which was on board her on March 23, 1932, at the time she was seized as hereinbefore stated.

32.

It is true that thereafter this Court, upon the application of the libelant, made and entered herein a minute order on August 21, 1933, as modified by the minute order made and entered herein on September 15, 1933, vacating the said Findings of Fact and Conclusions of Law and Decree, and continued this cause for further hearing on the merits in order that the Court might hear further argument with particular reference to the question whether the vessel "Patricia" under libel herein is entitled to the benefits of the said Convention, in order to stop tolling the time to appeal before this Court could consider that question.

33.

It is true that thereafter, and on January 29, 1934, and while this Court had under consideration the question referred to in paragraph "32" hereof, said Toichi Tomikawa, the claimant herein, duly moved the Court to dismiss the libel upon the ground, among others, that on December 5, 1933, the 21st Amendment to the Constitution of the United States was duly proclaimed as ratified, which repealed the 18th Amendment to the Constitution of the United States, and that by reason thereof the libel abated and that the jurisdiction of this Court was arrested except to enter an order dismissing the libel with direction to return to the said claimant the said vessel, cargo, engines, tackle, apparel, furniture, and everything that was on board her which was seized, as hereinbefore stated.

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Findings of Fact, the Court concludes as follows:

A.

That when the vessel "Patricia" was built her nationality was that of Japan.

B.

That by purchasing the vessel, the said Toichi Tomikawa, the claimant herein, became her sole and exclusive owner.

C.

That Toichi Tomikawa, the claimant herein was, and is, a citizen of the Empire of Japan.

D.

That when Toichi Tomikawa, the claimant herein, became the owner of the said vessel "Patricia", her nationality was that of her said owner.

E.

That the acts and conduct of the said Collectors of Customs in entering said vessel in their books as an American built and alien Japanese owned vessel precludes the libelant herein from disputing that fact.

F.

That the acts and conduct of the said Collectors of Customs in demanding and receiving annually "light

money” of the owners of said vessel during said period precludes the libelant herein from disputing the fact that her nationality is Japanese.

G.

That the statute which authorizes the giving of a number to a vessel contemplated and intended to apply to vessels owned exclusively by citizens of the United States, and not to an American built and alien Japanese owned vessel.

H.

That the Collectors of Customs had no right or authority to give said vessel the number of “970-A”.

I.

That the giving of said number to said vessel by the Collectors of Customs did not attach any dignity to her, nor convert her into a vessel of the United States.

J.

That the number “970-A” and the letters “L. A.” painted or appearing on the stern of said vessel at the time she was seized, as aforesaid, did not attach any dignity to her, nor signify that she was a vessel of the United States as contemplated by law.

K.

That the domicile of Toichi Tomikawa, the claimant herein was, and is, in the City of Nishinomiya in the Province of Hyogo, Japan, and was not changed by his residence within the United States.

L.

That the residence within the United States of Toichi Tomikawa, the claimant herein, is deemed temporary, and not permanent.

M.

That the fact that the said vessel appeared to be loaded below her water mark did not empower or authorize the said Chief Boatswain's Mate of the said revenue cutter to send one of his crew on board her, and himself to go on board her, without a search warrant or other process issued by a Court of competent jurisdiction.

N.

That the acts of the said Chief Boatswain's Mate and a member of his crew going on board of said vessel, and opening her hatchways and searching for spirituous liquor without a search warrant, was a violation of the 4th and 5th Amendments to the Constitution of the United States.

O.

That the said acts of the said Chief Boatswain's Mate and a member of his crew in searching the said vessel "Patricia" without a search warrant, and then seizing her, was null and void, illegal, and unlawful.

P.

That the said search and seizure of the said vessel "Patricia" on the high seas, outside of 3 marine miles from the coast of the United States, constituted a viola-

tion of Article I of the said Convention proclaimed January 16, 1930, 46 U. S. Stat. pages 2446-2448.

Q.

That the said search and seizure of the said vessel "Patricia" on the high seas, constituted a violation of Article II of the said Convention proclaimed January 16, 1930, 46 U. S. Stat. pages 2446-2448, for the reason that the said vessel was incapable of sailing, under her own power, within one hour from the said place of seizure to the nearest point of land of the United States.

R.

That the flying of a flag is merely notice to which nationality the vessel belongs, but is not evidence of that fact.

S.

That the failure of the said vessel "Patricia" to fly the Japanese flag at the time of her said seizure, did not authorize the boarding her for the said purpose, nor justify her said seizure.

T.

That the nationality of the owner of the said vessel "Patricia", and not the flying of a flag on her mast, determines her nationality.

U.

That all proceedings based on said search and seizure are null and void, contrary to law, and are of no legal force and effect.

V.

That the adoption of the said seizure by the said Collector of Customs is null and void, and of no legal force and effect.

W.

That all proceedings based upon the adoption of said seizure by the said Collector of Customs are null and void, and of no legal force and effect.

X.

That the said order and judgment in the said criminal action precludes the libelant herein from disputing the nationality of the said vessel as being a Japanese vessel.

Y.

That the said Toichi Tomikawa, the master of the said vessel "Patricia", did not violate any statute or law of the United States which subjected him to the payment of a penalty.

Z.

That the said Toichi Tomikawa, the master of the said vessel "Patricia", at the time of said seizure, did not violate any statute or law of the United States which subjected him to the payment of a penalty.

AA.

That the said vessel "Patricia", did not violate any statute or law of the United States which subjected her to the payment of a penalty, or condemnation or forfeiture.

BB.

That the said vessel "Patricia, at the time of said seizure, did not violate any statute or law of the United States, which subjected her to the payment of a penalty, or condemnation or forfeiture.

CC.

That upon the adoption of the 21st Amendment to the Constitution of the United States, which repealed the 18th Amendment thereof, this action abated, and thereby arrested the jurisdiction of this Court in the premises, except to order this action to be dismissed with direction to return to Toichi Tomikawa, the claimant herein, the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything that was on board her at the time of the said seizure.

THE COURT, THEREFORE, ORDERS AND DIRECTS that this action be dismissed upon the merits, and that the said Toichi Tomikawa, the claimant herein, is entitled to the return of the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything that was on board her at the time of said seizure, and that a decree be entered herein in favor of the said claimant, Toichi Tomikawa, and against the said libellant, the United States of America, accordingly, with costs to be taxed by the Clerk of this Court and inserted in the Decree.

The foregoing request and the foregoing proposed findings were submitted to the Hon. Harry A. Hollzer on May 16, 1934. The following order was made thereon, to wit:

The foregoing requests to find are each and all denied, except to the extent that the same are already incorporated in the findings and conclusions signed and filed under date of August 9, 1934. An exception is allowed to *to* Respondent and Claimant.

August 10-1934.

Hollzer
Judge.

[Endorsed]: Original No. 5567-H In the United States District Court in and for the Southern District of California Central Division United States of America, Libelant, vs. American Oil Screw "Patricia" No. 970-A, etc., Respondent. RESPONDENT'S AND CLAIMANT'S REQUEST TO FIND, AND FINDINGS OF FACT AND CONCLUSIONS OF LAW. Received copy of the within Request to Find and Findings of Fact and Conclusions of Law, etc., this 16th day of May, 1934. Peirson M. Hall DH Attorneys for Libelant. Filed Aug 10 1934 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk Max Schleimer, Att'y for Rspt & Claimant, 718-720 Grant Bldg., 355 So. Broadway, Los Angeles, Calif. TU 7714.

At a stated term ,to wit: The February Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 2nd day of August in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable Harry A. Hollzer, District Judge.

It appearing that the question has been raised as to whether the evidence shows:

That after the vessel involved herein had been seized and had arrived at the coast guard base, the U. S. Collector of Customs of the Port of Los Angeles adopted the seizure made by the officers of the Coast Guard, under Customs Seizure 11800 as to said vessel, her engines, tackle, apparel, furniture, etc., and as Customs Seizure 11,799 covering the cargo on said vessel.

That said Collector of Customs caused said vessel and cargo to be appraised and said vessel, her engines, tackle, apparel, furniture, etc, were *appraised* as having a value of \$8000 and said cargo was appraised under Section 607 of the Tariff Act of 1930 for the purpose of forfeiture proceedings as having a value not exceeding \$1000 and said cargo was appraised for the purpose of a basis of penalty against the master of the vessel under Sections

584 and 595 of said Act as having a penalty value of \$17,490.

That said Collector of Customs requested the U. S. Attorney for the Southern District of California to institute libel proceedings against said vessel, her engines, etc., for a violation of the customs and navigation laws of the United States.

That said Collector of Customs proceeded with the disposition of said cargo by advertising, etc; that no claim was filed with said Collector of Customs; that the latter disposed of the cargo of intoxicating liquors by destruction, except that 5 cases were retained for use as evidence.

That the U. S. Marshal for the Southern District of California arrested and attached said vessel, her engines, etc., and filed in this Court his return thereof, and that said Marshal did not arrest or attach the cargo of said vessel.

That the claimant never filed any claim for said cargo.
And,

IT FURTHER APPEARING that counsel for the government is prepared and desires to submit evidence upon the matters hereinbefore recited,

IT IS ORDERED that the submission of this cause be vacated, and said cause is set for further hearing on the 9th day of August, 1934, at the hour of 10 AM.

LOS ANGELES, CALIFORNIA

TUESDAY, AUGUST 7, 1934 11:00 O'CLOCK A. M.

...oOo...

THE COURT: We will resume this hearing in the Patricia matter.

MR. SCHLEIMER: May it please the court, before your Honor takes up that matter, I desire to call the court's attention that on August 2nd, 1934 the court made an ex parte minute order, and the usual exception, the customary exception has not been granted to the respondent and the claimant to that order. I therefore, at this time, move that such an exception be granted nunc pro tunc as of that date, and that the minutes be corrected accordingly.

THE COURT: That is to the order of August 2nd, setting the matter down for further hearing?

MR. SCHLEIMER: Yes, your Honor.

THE COURT: Does the Government desire an exception to that?

MR. IRWIN: No, your Honor.

THE COURT: Then, an exception may be noted, nunc pro tunc, as to the claimant.

MR. SCHLEIMER: At this time the claimant and respondent moves to set aside the ex parte order dated August 2nd, 1934, setting this matter down for hearing, upon the ground that the matters set forth in that ex parte order are not in issue or are not any issue tendered by the Government, either in the original libel of information or in the amended libel of information; therefore,

(Testimony of Charles W. Salter)

evidence could not be taken of the proposed matters stated in the ex parte order.

THE COURT: That motion is denied, and you may have an exception. Now, may we proceed with the taking of further evidence?

MR. IRWIN: Yes, your Honor. Mr. Salter, will you take the stand?

CHARLES W. SALTER,

called as a witness on behalf of the Libelant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

In answer to MR. IRWIN: I am Assistant Collector of Customs, Los Angeles. Since the 22nd day of June, 1925. I have the seizure report with me.

In answer to THE COURT: The document that I have before me is a part of the official records of the office of the Collector. One of the signatures appearing on this document purports to be the name of Frederick J. Dwight. He was on March 25, 1932, a member of the Coast Guard Service, with headquarters at the Base at San Pedro. Written down at the bottom in the lower right-hand corner is W. F. Mahan, who was then Deputy Collector in charge of the Customs at San Pedro. He is now deceased. This document has two official numbers. Number 223 and the line marked subport is the seizure number of the San Pedro office. Seizure No. 11,800 is the seizure number for the district and the official number of the seizure. That latter number is the one given to the document by my office.

(Testimony of Charles W. Salter)

THE COURT: The document itself may be received in evidence, and in lieu of leaving the original, a copy may be substituted.

MR. SCHLEIMER: May it please the court, I respectfully object to the introduction in evidence of this document upon the ground that it is not within the issues and it is now an attempt being made to inject in the case an issue that was not alleged in the original or in the amended bill of information.

THE COURT: The objection is overruled and an exception may be noted, and will Government's counsel arrange to substitute a copy for the original official document?

MR. IRWIN: Yes. I have a copy right here, which I will be prepared to offer in lieu of the original.

MR. SCHLEIMER: I would like to have a copy of that. If they are going to substitute a copy I would like for them to furnish me a copy of that.

THE COURT: Government's counsel can arrange for that later. We can't very well do it at this time.

MR. SCHLEIMER: That is satisfactory.

MR. IRWIN: Very well, your Honor.

THE CLERK: Is that to be marked, your Honor?

THE COURT: Have you the copy?

MR. IRWIN: I would like to have it marked Government's Exhibit next in order, your Honor.

THE COURT: We might give it a new series of exhibit numbers, that is, Government's Exhibit No. 1 for the hearing held on this date.

MR. IRWIN: Very well, your Honor.

(Testimony of Charles W. Salter)

[GOVERNMENT EXHIBIT No. 1 ON HEARING OF 8/7/34.]

11800

Customs Form 5955
 TREASURY DEPARTMENT
 T. D. 41639
 Art. 1023, C. R. 1923
 Revised June, 1931

Headquarters
 Port No.....
 Subport No. 223
 Declaration
 or Entry No.....

REPORT OF SEIZURE

United States Customs Service
 U. S. COAST GUARD,
 District No. Section Base #17.
 Port of San Pedro, California.
 Section Base #17. Office 25 March, 1932.
 (Preparing office) (Date of preparation)

Sir: You are hereby notified that the property described below was seized from T. Tomkiawa, ex American Oil-Screw PATRICIA arriving from High Seas, at (Name of Individual)
 (Vessel or vehicle) (port or place)
 Lat. 33° 18' 30" N., Long. 117° 47' 45" W., on 23 March, 1932, and has been delivered to the Customs Seizure Room
 (Place of seizure) (Date of seizure)

Describe property here.	Foreign value	Domestic value
The American Oil-Screw PATRICIA of Los Angeles,	Appr value	\$8000.00
Equipment and apparel.	W E K	
Delivered to Deputy Collector of Customs.	EXAMINER.	MAR 29 1932

(Testimony of Charles W. Salter)

State circumstances here.

While cruising on regular patrol 23 March, 1932, the CG-259 at 1515 stopped to board the American Oil-screw PATRICIA of Los Angeles. Upon boarding, her cargo holds were found to be loaded with sacked liquor. Took the crew of three, Nick Bartich, T. Tomikawa and G. Horote, aboard the CG-259 and placed Mo. M. M. 1c Edward Engle and Sea. 1c Louie J. Cousino aboard the PATRICIA. After notifying Base Commander by radio, proceeded to Section Base 17 with PATRICIA in tow. 0020, 24 March, 1932, secured at Base 17. Prisoners turned over to U. S. Customs Officials. An armed guard was placed over PATRICIA and cargo. Continued guard until the cargo of liquor was officially turned over to Deputy Collector of Customs.

(Continue on reverse side)

Sections of laws violated: R. S. 4377 and 4337, Sec. 593 (a), (b), Tariff Act of 1922, R. S. 3450, R. S. 5440.

Names and designations of officers making physical seizure: Frederick J. Dwight, C. B. M.

Arrests: Nick Bartich, T. Tomikawa and G. Horote.

Frederick J Dwight

Frederick J. Dwight, C. B. M.

(Name)

Officer in Charge CG-259.

.....of Customs.

(Designation)

(Testimony of Charles W. Salter)

To the Collector of the Port.

Copies to: DCC (10); Comdt. USCG (3);

U. S. District Atty. (1). Cal. Div. (1) File (1).

To the Appraiser: You will examine and appraise the above-described seized goods according to Sec. 606, T. A. 1930, and indorse return hereon. If perishable or immediate sale advisable, so state.

H. F. Shabor

Dep. Collector.

To be prepared in sextuplet; one copy to be retained by seizing officer's department, two copies for use of the Collector, and one copy each for the Bureau of Customs, the Comptroller of Customs, and the Department of Justice. In cases of customs seizures of boats, a copy of this report should be sent to the Commandant, U. S. Coast Guard.

[In pencil on face]:

Built

1924

71 Gr

43 net

L. 81 ft

B. 18

100 H P

1924 F. B. Morse

Jap 970 A

[Endorsed]: No. 5567-H Adm. U. S. vs. "Patricia"
Gov. Exhibit No. 1 on hearing of 8/7/34. Filed 8-7 1934
R. S. Zimmerman, Clerk U. S. Dist. Court - So. Dist.
Calif. By M. R. Winchell Deputy Clerk

(Testimony of Charles W. Salter)

In answer to MR. IRWIN: We have had numerous seizures adopted by our office that have been made by the Coast Guard.

Q Now, with particular relation to the seizure of the boat "Patricia", was there any other seizure other than No. 11,800 made by your office?

MR. SCHLEIMER: I object to that as irrelevant and immaterial, and furthermore it is admitted by the pleadings that the Collector of Customs has adopted the seizure. We allege that.

THE COURT: Objection overruled and you may have an exception.

THE WITNESS: Will you read the question?

(Question read by the reporter.)

THE WITNESS: May I refer to the official records?

BY MR. IRWIN:

Q. Yes, if you will, please.

A Yes, sir.

Q Has that a number?

A It has.

Q What is that number?

A 11,799.

Q Have you that document with you?

A Yes, sir.

THE COURT: Let the record show that counsel for the claimant has examined the document No. 11,799.

MR. IRWIN: Which the witness has just stated was likewise a separate seizure made in connection with the Oil Screw "Patricia".

(Testimony of Charles W. Salter)

Q Now, this record of seizure is dated March 25, 1932, the same date as Government's Exhibit 1 of this date, which was just previously introduced; is that correct?

A. Yes.

Q And what was incorporated in this seizure?

MR. SCHLEIMER: Objected to, the document speaks for itself.

MR. IRWIN: All right, I offer the document in evidence as Government's Exhibit 2 of this date, and ask that a copy be substituted hereafter.

MR. SCHLEIMER: Objected to for the reason the original libel of information and amended libel of information alleged the seizure and that it was adopted by the Collector of Customs, and that was admitted by the respondent and claimant, and it is immaterial and irrelevant and simply an attempt being made now to inject an issue which is not before the court.

THE COURT: This document is also part of the official records of your office?

THE WITNESS: Yes, sir.

THE COURT: And the signature Frederick J. Dwight is the signature of the same Mr. Dwight whom you previously mentioned?

THE WITNESS: Yes, sir.

THE COURT: And the document—the signature at the bottom with the initials, is that of the former Collector of the port?

THE WITNESS: Yes, sir.

THE COURT: He was the collector of the port at the time of the date of the document?

(Testimony of Charles W. Salter)

THE WITNESS: Yes, sir.

THE COURT: Now, is a copy to be used in place of the original?

MR. IRWIN: Yes, your Honor.

THE COURT: Objection overruled and an exception may be noted, and the document will appear in evidence as Government's Exhibit No. 2, for this hearing, and a copy of the same may be substituted.

[GOVERNMENT EXHIBIT NO. 2 ON HEARING OF 8/7/34.]

11799

Customs Form 5955
 TREASURY DEPARTMENT
 T. D. 41639
 Art. 1023, C. R. 1923
 Revised June, 1931

Headquarters
 Port. No.....
 Subport No. 222
 Declaration
 or Entry No.....

REPORT OF SEIZURE

United States Customs Service
 U. S. COAST GUARD,
 District No. Section Base #17.
 Port of San Pedro, California.
 Section Base #17. Office 25 March, 1932.
 (Preparing office) (Date of preparation)

(Testimony of Charles W. Salter)

Sir: You are hereby notified that the property de-
 Nick Bartich
 G. Horoti
 scribed below was seized from T. Tomikawa and the
 (Name of individual)
 ex American Oil-Screw PATRICIA arriving from
 (Vessel or vehicle)
 High Seas, at Lat. 33° 18' 30" N., Long. 117° 47' 45" W.,
 (Port or place) (Place of seizure)
 on 23 March, 1932, and has been delivered to the Customs
 (Date of seizure)
 Seizure Room.

Describe property here	Foreign value	Domestic value
1749—Sacks supposed to contain as- sorted Liquors and retained un- der section 607 act of 1930 not to exceed \$1000.00 in value MAR 29 1932 C C Babcock ex appraiser merchandise ACTING APPRAISER		
1749—Sacks of assorted <i>spiritus</i> liquor.		
112—Empty metal 50-gallon oil drums. not at off. stores Delivered to Deputy Collector of Customs.		appr. by W. E. K. at \$56.00
Appraised value as is \$17,490.00 in conformity as per letter attached. APR 21 1932 C C Babcock ex appraiser merchandise ACTING APPRAISER		

(Testimony of Charles W. Salter)

State circumstances here.

While cruising on regular patrol 23 March, 1932, the CG-259 at 1515, stopped to board the *Americal* Oil-Screw PATRICIA of Los Angeles. Upon boarding, her cargo holds were found to be loaded with sacked liquor. Took the crew of three, Nick Bartich, T. Tomikawa and G. Horote, aboard the CG-259 and placed Mo. M. M. 1s Edward Engle, and Sea. 1c Louie J. Cousino aboard the PATRICIA. After notifying Base Commander by radio, proceeded to Section Base 17 with PATRICIA in tow. 0020, 24 March, 1932, secured at Base 17. Prisoners turned over to U. S. Customs Officials. An armed guard was placed over PATRICIA and cargo. Continued guard until the cargo of liquor was officially turned over to Deputy Collector of Customs.

(Continue on reverse side)

Oil drums retained on "Patricia".

ADVERTISED AUG 17 1932

5 sacks liquor held for evidence.

1744 sacks liquor DESTROYED FEB-9 1933

Sections of laws violated: R. S. 4377 and 4337., Sec. 584 [in pencil].

593 (a), (b), Tariff Act of 1922.

Names and designations of officers making physical seizure: Frederick J. Dwight, C. B. M.

(Testimony of Charles W. Salter)

Arrests: Nick Bartich, T. Tomikawa and G. Horote.

Frederick J. Dwight, C. B. M., USCG,
Frederick J Dwight

Officer in Charge CG-259.

(Name)

.....of Customs.

(Designation)

To the Collector of the Port.

Copies to: DCC-(10); Comdt. USCG (3);

U. S. District Atty. (1). Cal. Div. (1); File (1).

3/29/32

To the Actg Appraiser: You will examine and appraise the above-described seized goods according to Sec-606, T. A. 1930, and indorse return hereon. If perishable or immediate sale advisable, so state.

HOWARD W. SEAGER, by B. N. D.

Collector.

To be prepared in sextuplet; one copy to be retained by seizing officer's department, two copies for use of the Collector, and one copy each for the Bureau of Customs, the Comptroller of Customs, and the Department of Justice. In cases of customs seizures of boats, a copy of this report should be sent to the Commandant, U. S. Coast Guard.

[In pencil on face]: Jap 970 A

(Testimony of Charles W. Salter)

IN REPLY REFER TO: BN
Case No. 11799

[Emblem]

OFFICE OF THE COLLECTOR
DISTRICT NO. 27

Address all Communications for this Office to the Collector
TREASURY DEPARTMENT
UNITED STATES CUSTOMS SERVICE
LOS ANGELES, CALIF.

April 19, 1932

Acting Appraiser
Los Angeles, California

Sir:

Attached hereto is Seizure Report No. 11799 covering 1749 sacks of assorted liquor seized from the American Oil-Screw PATRICIA on 3/25/32.

It is requested that the liquor be appraised according to its domestic value for the purpose of assessing a penalty, the appraisalment under Section 607 applying only to forfeiture proceedings.

Respectfully ,

Howard W. Seager

Collector of Customs

By: Chas W Salter

Assistant Collector

Incl.

[Endorsed]: No. 5567-H Adm. U. S. A. vs. "Patricia." Gov. Exhibit No. 2 on hearing of 8/7/34. Filed 8-7 1934 R. S. Zimmerman, Clerk U. S. Dist. Court - So. Dist. Calif. By M. R. Winchell Deputy Clerk

(Testimony of Charles W. Salter)

In answer to MR. IRWIN: I signed the letter dated April 1, 1932 on the letter head of the Treasury Department, addressed to the United States Attorney. I attached a copy of the report as stated in that letter.

In answer to THE COURT: I sent the letter dated April 1, 1932, addressed to the United States Attorney, accompanied by a copy of what is designated as Seizure Report No. 11,800, to the United States Attorney for this District.

THE COURT: We notice a file mark endorsed on the letter indicating that the same was received by the office of the United States Attorney for this District under date of April 4, 1932. Will proof be required to show that this document has been produced from the files of the United States Attorney's office?

MR. SCHLEIMER: Without waiving any right, I don't know why such proof should be required.

THE COURT: Yes, but objection is interposed to the document going into evidence?

MR. IRWIN: The offer is now made. The document which has just been identified by the witness on the letterhead of the Treasury Department, dated April 1, 1932, addressed to the United States Attorney, and signed Howard W. Seager, Collector of Customs, by Charles W. Salter, Assistant Collector, and accompanied by a copy of official report of Seizure No. 11,800, we ask that it be received in evidence as Exhibit 3, under the date of this hearing.

MR. SCHLEIMER: Objected to as the libel of information states a seizure was adopted by the collector of

(Testimony of Charles W. Salter)

customs, and that is admitted in the pleadings, and it is incompetent, irrelevant and immaterial, and further, it is an attempt to inject an issue not before the court.

THE COURT: Objection overruled and exception noted. The document will be marked as Government's Exhibit 3 for this hearing.

[GOVERNMENT EXHIBIT No. 3 ON HEARING OF 8/7/34.]

IN REPLY REFER TO: BN
Case No. 11800

[Emblem]

OFFICE OF THE COLLECTOR
DISTRICT NO. 27

Address all Communications for this Office to the Collector
TREASURY DEPARTMENT
UNITED STATES CUSTOMS SERVICE
LOS ANGELES, CALIF.

April 1, 1932

United States Attorney
522 Federal Building
Los Angeles, California

Sir:

Under the provisions of section 610 of the tariff act it is requested that libel proceedings be instituted against one American Oil-Screw PATRICIA, appraised value \$8000, seized at San Pedro, California, on March 25, 1932 by the Coast Guard for violation of R. S. 4337, 4377, and sections 584 and 593 of the tariff act.

(Testimony of Charles W. Salter)

A copy of Seizure Report No. 11800 covering the said vessel is inclosed herewith.

A detailed report is to be submitted by the Customs Agents giving a list of *witness* to appear for the Government.

Respectfully,

Howard W. Seager

Collector of Customs.

By: Chas W Salter

Assistant Collector

Incl.

[Endorsed]: No. 5567-H Adm U. S. vs. "Patricia"
Gov. Exhibit No. 3, on hearing of 8/7/34 Filed 8-7 1934
R. S. Zimmerman, Clerk U. S. Dist. Court - So. Dist.
Calif. By M. R. Winchell Deputy Clerk

[For Seizure Report No. 11800, referred to above, see
Government Exhibit No. 1 on Hearing of 8/7/34.]

MR. IRWIN: May I ask that the Clerk clamp them together?

Now, at this time, I desire to call the court's attention and read into the record particularly the return on the monition by the United States Marshal under date of April 28th, 1932.

THE COURT: That is already a part of the records in the case.

MR. IRWIN: It is. It is just in particular connection with this letter which we just received in evidence.

(Testimony of Charles W. Salter)

The monition was dated the 28th day of April, 1932, signed by R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy. The return states as follows—

MR. SCHLEIMER: (Interrupting) Before you read that, may I interpose an objection to it. I object to it upon the ground that it is irrelevant and immaterial. It is admitted by the original and amended libel of information that the seizure was made and that the seizure was adopted by the Customs Collector of this District, and that it is now an attempt being made to inject an issue which is not before the court, and irrelevant and immaterial.

THE COURT: Objection overruled and exception noted.

MR. IRWIN: The return states as follows: "In obedience to the within monition, I attached the American Oil Screw "Patricia" therein described, on the 28th day of April, 1932, and have given due notice to all persons claiming the same, that this court will, on the 23rd day of May, 1932, if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to the trial and condemnation thereof, should not claim be interposed for the same. Dated April 28, 1932, A. C. Sittel, U. S. Marshal, by Morris Tovil, Deputy." That was made a part of these records of the United States District Court, file No. 5567-H.

THE COURT: What is the description contained in the body of the monition?

MR. IRWIN: The body of the monition states, "The President of the United States of America, to the Mar-

(Testimony of Charles W. Salter)

shal of the United States for the Southern District of California Greeting: WHEREAS, a libel in rem hath been filed in the District Court of the United States for the Southern District of California on the 28th day of April, in the year of our Lord (1932) one thousand nine hundred and thirty-two by the United States of America, Libelant, vs American Oil Screw Boat "Patricia" No. 970-A, her cargo, engines, tackle, apparel, furniture, etc., respondent" etc.

I particularly read this to show the return is made only as to the boat "Patricia".

(Argument.)

In answer to MR. IRWIN: The red ink figures on this report are the figures of the Examiner of Merchandise and the approval of the Appraiser of Merchandise who was then known as the Acting Appraiser, covering 1,749 sacks supposed to contain assorted liquors and returned under Section 607, Act of 1930, not to exceed \$1,000.00. That is for forfeiture purposes. The appraised value \$17,490.00 is in conformity with the requirement of the regulations that a value be obtained, the domestic value, for the purpose of assessing penalties against the Master of the Vessel.

In answer to THE COURT: That is the usual practice of our office.

In answer to MR. IRWIN: You understand, reverting to the seizure No. 11,800 covering the vessel, the vessel was never taken out of the water and turned over to the Deputy Collector at San Pedro, but the liquors, for safe-keeping, were transported immediately to the ap-

(Testimony of Charles W. Salter)

praisers stores in Los Angeles and placed in the seizure room, and pending their ultimate appraisalment and disposition. The letter which is attached to this seizure report No. 11,799, Government's Exhibit 2, which was directed to the Acting Appraiser, signed by Mr. Salter. That is my signature wherein it is stated—

“Attached hereto is seizure report No. 11,799 covering 1,749 sacks of assorted liquor seized from the American Oil Screw ‘Patricia’ on 3-25-32. It is requested that the liquor be appraised according to its domestic value for the purpose of assessing a penalty, the appraisalment under Section 607 applying only to forfeiture proceedings.”

MR. IRWIN: Let the record show that the letter of July 8, 1933 has just been shown and examined by counsel for the respondent and claimant.

In answer to MR. IRWIN: The signature “Charles W. Salter”, on this letter is my signature; that letter was written by me.

MR. IRWIN: Do you care to stipulate, counsel, that this letter was received by me on July 8th, 1933?

MR. SCHLEIMER: I will take your word for it.

MR. IRWIN: At this time I offer the letter of July 8th, 1933, on the letterhead of the Treasury Department, United States Customs Service, to the United States Attorney, attention Assistant Attorney Irwin, signed by Charles W. Salter, Assistant Collector, as being directions to the United States Attorney and a summary by the Assistant Collector of what was done by him in connection with the cargo of the boat “Patricia”.

(Testimony of Charles W. Salter)

MR. SCHLEIMER: I object to it upon the ground that it is a self-serving declaration, and on the further ground that I have heretofore urged in this matter today.

THE COURT: Objection overruled and exception may be noted and the document will be marked as Government's Exhibit No. 4, for this hearing.

[GOVERNMENT EXHIBIT No. 4 ON HEARING OF 8/7/34.]

CWS:R

IN REPLY REFER TO: Seizure #11799
 " #11800

[Emblem]

OFFICE OF THE COLLECTOR
 DISTRICT NO. 27

Address all Communications for this Office to the Collector

TREASURY DEPARTMENT
 UNITED STATES CUSTOMS SERVICE
 LOS ANGELES, CALIF.

July 8, 1933

United States Attorney
 Federal Bldg.
 Los Angeles, Calif.

Sir: Attention—Asst. Atty Irwin

Responding to your telephone request for memoranda relative to the facts concerning the seizure of the oil screw vessel PATRICIA and the seizure of 1749 sacks of liquor, I respectfully submit the following:

(Testimony of Charles W. Salter)

On March 23, 1932 there was seized by the Coast Guard at Los Angeles the oil screw vessel PATRICIA, which was covered by customs seizure #11800. An additional seizure #11799 covering 1749 sacks of liquor and 112 empty oil drums was made.

In accordance with the provisions of Section 607 of the Tariff Act of 1930 merchandise the importation of which is prohibited shall be held not to exceed \$1000. in value. Therefore the forfeiture of the liquor, its value being fixed by the statute as not exceeding \$1000., was sought in the manner prescribed by Section 607 by advertising for a period of three successive weeks. This advertisement was duly made in the Los Angeles Times on August 17, 24, and 31, 1932. Section 608 of the Tariff Act authorizes the claimant any time within twenty days of the date of the first publication of the notice of seizure to file with the Collector of Customs a claim stating his interest therein, and upon filing such claim and giving a bond to the United States in the penal sum of \$250.00 it becomes the duty of the Collector of Customs to transmit such claim and bond to the United States Attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law which, as you are aware, results in the filing of libel proceedings and the placing of the seized and claimed merchandise in the custody of the United States Marshal.

In the case of the merchandise covered by Seizure #11799, which was duly advertised in the Los Angeles Times as stated above, at no time was any claim filed nor were libel proceedings instituted, nor was the merchan-

(Testimony of Charles W. Salter)

dise taken into the custody of the United States Marshal. It was, however, duly forfeited under due process of law

United States Attorney - 2 -

to the Government and its destruction was ordered on September 13, 1932. Prior to directing the destruction of this liquor communication was had with the United States Attorney's office with a view to determining what quantity, if any, was desired by that office to be held as evidence to be presented to the court in the prosecution of the criminal cases, and at the direction of the United States Attorney five cases were so retained and are still in the custody of this office to be used as evidence.

While the destruction of this liquor was ordered September 13, 1932 you will understand that with a limited force and lack of really suitable accommodation for the destruction of vast quantities of liquor (and there were many other seizures to be destroyed), the actual completion of the destruction of the liquor was not had until February 9, 1933. The destruction of the liquor by the customs was conducted by employees under the immediate supervision of the Appraiser of Merchandise in what is known as the United States Appraiser's Stores. The method of destruction was breaking of the bottles, the liquid running into the sewer.

In a report submitted to your office under date of April 1, 1932, your attention was invited to the provisions of Sections 584 and 593, Tariff Act of 1930, looking to the imposition of certain penalties against the offenders; also for the information of the court in the fixing of penalties the liquors were submitted to the Appraiser under the

(Testimony of Charles W. Salter)

provisions of Section 606 of the Tariff Act to determine the domestic value for use as a basis in fixing the penalty as outlined in Section 584. This value was returned as being \$17,490.00.

It is respectfully submitted that in connection with seizure #11799 covering the 1749 sacks of liquor there is nothing in the record which shows that the institution of libel proceedings was ever requested by the Collector of Customs; on the contrary the merchandise was duly advertised for forfeiture in conformity with the provisions of Section 607 of the Tariff Act was duly forfeited without any claim having been filed, and this particular merchandise remained continuously in the custody of the Collector of Customs and at no time came within the custody of the court by having been taken over by the United States Marshal's office.

United States Attorney - 3-

Seizure #11800 covers the vessel PATRICIA, its engine, tackle, apparel, furniture, etc., and is entirely separate and distinct from seizure #11799. Inasmuch as the appraised value of this vessel was \$8,000.00 it was mandatory under the provisions of Section 610, Tariff Act of 1930 that the seizure be reported to the United States Attorney's office for the institution of appropriate proceedings for the condemnation of such property, and it is respectfully submitted that it was in error, and entirely without the knowledge of this office until very recently that in the preparation of the libel proceedings seeking the forfeiture of the vessel the word "cargo" was included therein.

(Testimony of Charles W. Salter)

If this office may express an opinion to you, it would seem that there are two distinct cases involved in connection with the PATRICIA—that of the forfeiture or attempted forfeiture of the vessel, covered by seizure #11800; that of the forfeiture of the liquors, covered by seizure #11799; that the action of this office was absolutely in conformity with the law in both instances. In the case of the PATRICIA, the appraised value being more than \$1,000., the rule laid down in Section 610 being followed. In the seizure of liquors, the statute particularly provides that for forfeiture purposes prohibited importations are valued at not more than \$1,000. and prescribing forfeiture to be accomplished in the absence of a claim by advertising. There having been filed no claim, there was no necessity for referring this particular seizure to the United States Attorney's office requesting the institution of forfeiture proceedings. Therefore the merchandise involved in seizure #11799 never came into the custody of the court, but was disposed of in accordance with the law.

It is hoped that the above may be of some service to you. If there is anything else that this office can furnish, which may be of assistance, we shall indeed be glad to do so.

Respectfully,

Chas. W. Salter

Chas. W. Salter

Assistant Collector

[Endorsed]: No. 5567-H Adm U. S. vs. "Patricia".
Gov. Exhibit No. 4 on hearing 8/7/34 Filed 8-7 1934
R. S. Zimmerman, Clerk U. S. Dist. Court - So. Dist.
Calif. By M. R. Winchell Deputy Clerk.

(Testimony of Charles W. Salter)

In answer to MR. IRWIN: I took steps, in connection with the provisions in Section 607 of the Tariff Act of 1930, with respect to this liquor. I directed that the liquor be advertised for forfeiture, and the advertising was done, starting in the Los Angeles Times with its issue of August 17, 1932. That is shown in stamp on the side where it is stamped as "Advertised August 17, 1932". There were two other publications, the 24th of August and 31st of August. There was no claim filed or any bond posted with my office. The liquor was automatically forfeited to the Government, and ordered to be destroyed, after having consulted with the office of the United States Attorney to determine whether or not it was his desire to have any, and if so, how much, of this liquor to be retained as evidence for use in any criminal trial that might take place. Five cases was retained. The stamp at the bottom of page 1, of Government's Exhibit 2, in ink, "1,744 sacks of liquor" and then stamped "destroyed Feb. 9, 1933," correctly represents what was done with that liquor under my direction on that date; that is 1,749 sacks originally seized, less the 5 sacks retained by the United States Attorney for evidence. Government's Exhibit 1, in the red ink in reference to the American Oil Screw "Patricia", appraised value \$8,000, was placed on there after appraisal on March 29, 1932. The initials "W. E. K." are the examiner, W. E. Kelly. He was the one that made the appraisal and he was in the service at that time; he was the examiner of merchandise at San Pedro, California.

MR. IRWIN: That is all.

(Testimony of Charles W. Salter)

CROSS-EXAMINATION

In answer to MR. SCHLEIMER: My title is Assistant Collector. I was such in March, 1932. The first advice that I personally received of the seizure was by telephone the day the seizure reports were turned over to the Deputy Collector at San Pedro, at which time arrangements were made to have the liquors transported to the Appraisers Stores in Los Angeles.

BY MR. SCHLEIMER:

I have no knowledge where it was transported from in San Pedro. I have no recollection of having been informed that the cargo was seized. I would suppose that is true. It was seized by the Coast Guard. I received the telephone information of the seizure of the vessel "Patricia" and cargo. To the best of my memory, it was on or about March 25. I ascertain it from the date of the report. I can't say definitely the date that I was informed by telephone communication of the seizure. Then I gave instructions to remove the cargo to Los Angeles to place it in the warehouse of the Customs Collector. Subsequent to the seizure I received a telephone communication of the seizure of the vessel "Patricia" and her cargo on the date that she was seized. I have no knowledge how soon after that. It might have been the same day. I received a telephone communication from the then Deputy Collector of Customs in charge at San Pedro, to the effect that the Coast Guard had turned over the seizure reports covering the liquor and the vessel; that the liquor, following the usual custom, was being sent to the Appraisers Stores for safe-keeping. That I believe may

(Testimony of Charles W. Salter)

have been on the 25th of March, which is the date of the seizure report covering the vessel; likewise the date of the seizure report covering the liquor. Then the liquor was placed in storage. There were a number of drums aboard the ship that were not taken off. Empty oil drums that remained on the vessel. The liquor was taken off the vessel and placed in the warehouses as I have testified. The liquor taken off of the vessel and placed in the warehouse on the same day that I received the telephone message. It may have been the 25th of March or thereabouts. It might have been the day the Coast Guard seized the vessel. I have no recollection sending to the United States Attorney's office a copy of the seizure report covering the liquor. I did send to him a copy of the seizure report covering the vessel, and requested him to institute libel proceedings. You will understand that these reports are prepared by representatives of the Coast Guard. The Coast Guard may have sent it, but I did not. I received the original and several copies of the reports. Mr. Dwight prepares this report and he makes the notations "copies to D. C. C. (10); Commandant U. S. C. G. (3); U. S. District Attorney (1); Cal. Div. (1); file (1)." I received the original report covering the vessel, and the one covering the liquor. After appraisement was had I took it up with the United States Attorney with relation to the vessel.

BY MR. SCHLEIMER:

Q Who, Mr. Chichester?

A The record speaks for itself. Asking for forfeiture proceedings to be instituted.

(Testimony of Charles W. Salter)

Q That was the next step you did?

A Yes, sir, on April first.

Q Then you, acting on behalf of the Customs Collector, adopted the seizure made by the Coast Guard as to the vessel and the liquor, the cargo, is that right?

MR. IRWIN: Objected to as calling for a conclusion of the witness. The evidence has shown that there has been two separate seizure reports made, and he is incorporating them both together.

THE COURT: But is there any dispute about the fact that while the letter to the United States Attorney instructed him to institute libel proceedings with respect to the boat, that the Collector adopted the seizure also as to the liquor and proceeded to act as he considered he should proceed, as to the liquor?

MR. IRWIN: May it please the court, that is not the exact contention. That is what we are arguing about, that there were two separate seizures adopted by the collector, one he adopted was that of the boat, and the other was that of the liquor. Therefore, I have no objection to counsel saying whether or not he adopted those two seizure reports submitted to him by the Coast Guard, because that was what was done.

MR. SCHLEIMER: I know the District Attorney would like to have me state it that way, but your Honor will remember at the very inception of this case we had Mr. Dwight here, and he testified that he made one seizure, went on board the vessel and took charge of it and then took charge of the liquor and brought it to San Pedro. What they are trying to do is to split it, that there were

(Testimony of Charles W. Salter)

two separate seizures, but there was not; there was only one seizure, except that there were two separate reports. And the Collector adopted the seizure.

MR. IRWIN: I think the record speaks for itself. We have two seizure reports.

THE COURT: Let's go ahead with the evidence.

THE WITNESS: In that connection I may say this: In the transaction of our business, all very largely governed by the regulations, the regulations of 1931 require, where the value of the vessel or the vehicle exceeds \$1,000 and therefore subject to libel, and not subject to forfeiture by advertising, and the liquors and other prohibited articles are seized at the *itme* the vessel is seized, that they must be segregated. The regulations are there on the table if you wish access to them.

THE COURT: Perhaps counsel can read into the record the regulations.

MR. SCHLEIMER: I think we should be permitted to finish our cross examination.

THE COURT: Yes, go ahead.

BY MR. SCHLEIMER:

Q You, on behalf of the Customs Collector, adopted the seizure made by Mr. Dwight, did you not?

A Covering what?

Q Covering the vessel and the cargo and anything on board?

A One sizure was adopted covering the vessel, another seizure was adopted covering the liquors, and the drums.

(Testimony of Charles W. Salter)

Q Is it not a fact that Mr. Dwight made one seizure at one time of the vessel and everything that was on board?

THE COURT: How could you ask this witness to speak for the officer, Mr. Dwight?

MR. SCHLEIMER: If he doesn't know it, he can say so.

THE COURT: It is perfectly obvious that he was attending to his business up here, and Mr. Dwight down at the Coast Guard Base.

MR. SCHLEIMER: But he told us he received a telephone communication as to the vessel and the cargo, and I am asking as to how he made the adoption.

THE COURT: Read the question.

(Question is read by the reporter.)

THE WITNESS: I would say no.

BY MR. SCHLEIMER:

Q. Why not?

A Because he submitted two seizure reports, one covering the liquors and drums, and the other covering the vessel.

Q. Is it not a fact that you told us that he was required to make two separate reports under the regulations?

A Yes, sir.

Q And as a matter of fact he only made one seizure, but two separate reports?

A I have no knowledge.

Q Now you, on behalf of the Collector, adopted these seizures, did you not?

A Yes, sir.

(Testimony of Charles W. Salter)

Q That is as to the vessel and the liquor that was on board the vessel?

A Yes, sir.

Q And you adopted the reports made by Mr. Dwight?

A. Yes, sir.

Q Then you forwarded a report that you received from Mr. Dwight regarding the vessel with a letter to the District Attorney's office and requested them to take action?

A Yes, sir. That was not the first step that was taken.

Q That was not the first step?

A No, sir.

Q What was the first step?

A To direct an appraisement be made of the vessel, and an appraisement to be made on the liquors.

Q And you have already told us how that was done?

A. Yes, sir.

Q And then the second step was sending a copy of the report regarding the vessel, with your letter to the District Attorney's office, requesting that they bring action?

A Yes, sir.

Q And then this libel suit was filed, is that correct?

A It is.

MR. IRWIN: I object to that as the record speaks for itself.

THE COURT: Well, so far as the witness knows, that is what happened. Is that your answer?

THE WITNESS: That is it, yes.

(Testimony of Charles W. Salter)

BY MR. SCHLEIMER:

Q. Now, this libel suit was filed about April 28th, 1932, am I correct about that?

A. I believe you are.

Q. You had knowledge of that?

A. The only knowledge I had of it was that we requested the United States Attorney to institute libel proceedings against the vessel.

Q. And do you recall interviewing Mr. Chichester, an assistant or deputy United States Attorney?

MR. IRWIN: I will stipulate there was an assistant by the name of Frank Chichester, and that he participated in the conduct of this litigation.

THE WITNESS: I may have talked with him about it, but I don't recall it.

BY MR. SCHLEIMER:

Q. Did he confer with you regarding the preparation of the libel information to be filed?

A. No, sir.

Q. On April 28th, 1932 the liquor that was seized and removed to the warehouse was still at the warehouse, was it not?

MR. IRWIN: Objected to as calling for a conclusion of the witness.

THE COURT: Well, according to the records of your office, is that a fact?

THE WITNESS: Yes, sir, it is.

(Testimony of Charles W. Salter)

BY MR. SCHLEIMER:

Q. Now, when did you decide to advertise the liquor for the destruction?

A. When we had a sufficient number of seizures requiring an advertisement to warrant placing an advertisement in the papers.

Q. I asked you when, regarding the date?

A. It would have been somewhere between the first or fifteenth of August.

Q. What year?

A. 1932.

Q. So that up to that time the liquor was still at the warehouse?

A. Yes, sir.

Q. Do you recall that I procured a subpoena from the clerk of this court and served it on the collector, and do you recall being present in court when we were discussing or making an application to quash the seizure?

MR. IRWIN: Objected to as being ambiguous. If counsel knows the date, I ask that he give the date.

THE COURT: As far as the witness has recollection, he may answer.

THE WITNESS: I have never been in court in connection with this case until today.

BY MR. SCHLEIMER:

Q. Never been in court?

A. Not in connection with this case, nor have I been served with any subpoena to appear in court in connection with this case.

(Testimony of Charles W. Salter)

Q Could you swear to that?

A Yes, sir.

Q Do you recall the collector turning over the subpoena to you?

A No, sir.

Q Do you recall the Deputy Collector in San Pedro turning over the subpoena to you?

A No, sir.

Q. You don't recall it?

A No, sir.

(Argument.)

THE WITNESS: I have no recollection of participating in any such conference until after the destruction, when I conferred with you.

In answer to MR. SCHLEIMER:

A I don't see anything on the reports that would lead me to believe that I had a conference regarding the destruction of the liquor. I recall that you called at the office for information as to where the cargo was stored. I recall sending for the file. I recall opening the file in your presence and giving you certain information from the contents of my file. I do not recall giving you the information that before I ordered the destruction of the liquor I conferred with the District Attorney's office, and that I indicated on the records where I had such a notation. I have my file here.

Q Will you kindly produce it?

THE COURT: Gentlemen, this hearing is going on so far during the noon hour, we will have to call a halt of it. We have an afternoon session as well, and we are

(Testimony of Charles W. Salter)

going to suggest that the proceedings will have to be somewhat expedited.

At the present time we seem to be spending a lot of time fishing for something about which there is considerable doubt as to whether it ever had any existence. At any rate it is now far into the noon recess, having in mind that we still have matters engaging our attention this afternoon, we shall resume this hearing at 2:00 o'clock.

Can you return at that time?

THE WITNESS: Yes, sir, I will be here.

(Whereupon, an adjournment was taken until 2:00 o'clock P. M.)

LOS ANGELES, CALIFORNIA

TUESDAY, AUGUST 7, 1934 2:00 O'CLOCK P.M.

...oOo...

THE COURT: Now, then, I believe Mr. Salter was on the stand.

CHARLES W. SALTER,

called as a witness on behalf of the Libelant, having been previously sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION (continued)

In answer to MR. SCHLEIMER: I recall Exhibit 4, of this date, that is the letter dated July 8th, 1933, which I wrote the United States Attorney, attention Mr. Irwin. On page 2 thereof I say that its destruction, meaning the

(Testimony of Charles W. Salter)

liquor, was ordered on September 13, 1932. I wrote that letter. I do not recall who ordered the destruction of the liquor, whether I or the Collector did. It was just done in the usual run of business. I may have signed the letter ordering its destruction or the Collector may have signed it. Those are always in writing. I have that order in my office. I recall the statement in the letter:

“Prior to directing the destruction of this liquor communication was had with the United States Attorney’s office with a view to determining what quantity, if any, was desired by that office to be held as evidence to be presented to the court in the prosecution of the criminal cases.”

To the best of my recollection that was verbal.

MR. IRWIN: I am going to object to any particular question along this line. This is not a test of Mr. Salter’s memory. We stipulated, and counsel knows that the United States Attorney’s office ask to have five cases held as evidence.

Those matters are usually handled by the Clerk in the office, who takes immediate charge of seizure reports.

Q But in this sentence that I read from the letter you said that there were communications had with the United States Attorney’s office, and the question that I asked you was whether that communication was in writing or verbal, and you said it was verbal.

A That is to the best of my recollection at the present time.

Q I want to know with whom was that verbal communication with the United States Attorney’s office?

(Testimony of Charles W. Salter)

A I have told you that usually it was had with the Clerk who has immediate charge of the seizure records.

Q Do you mean the Clerk in the United States Attorney's office?

A No, sir, the clerk in the Customs House.

BY MR. SCHLEIMER:

Q Is it not a fact that you personally had a communication with Chichester?

A No, sir.

Q Are you sure of that?

A I am quite sure of it.

Q Is it not a fact that you and Mr. Chichester consulted, and after conferences you decided to destroy the liquor, except the five cases?

MR. IRWIN: At this time I am going to object to this inference, unless counsel is prepared to assure the court with some offer of proof, when he is insinuating that this witness, a responsible official of the United States Government is committing perjury on the stand. Unless he is prepared to make such proof he should reframe the question.

THE COURT: Will counsel reframe the question and indicate the *approximate* date and place when you allege such conference took place?

BY MR. SCHLEIMER:

Q Do you recall when I interviewed you at your office?

A Very distinctly.

Q Do you remember what date it was?

A No, I don't recall the date.

(Testimony of Charles W. Salter)

Q Well, is it not a fact that prior to that interview I had with you, you conferred with Mr. Chichester and at that conference it was decided that the liquor be destroyed except five cases?

MR. IRWIN: Since counsel has stated what his attitude is going to be, I am going to object to this question until sometime is fixed. He says, "prior to his conference with him", and as I understand it that was after or about the time the liquor was sold, or rather, destroyed, some eight months after this action was instituted. The witness has denied the conversation with Mr. Chichester.

THE COURT: Yes, let the question be reframed.

MR. SCHLEIMER: I can't see how I could.

THE COURT: Does counsel know?

MR. SCHLEIMER: He admitted that I conferred with him.

THE COURT: Does counsel know that any conference took place between the witness and Mr. Chichester, of the character in question?

MR. SCHLEIMER: I intend to prove that Mr. Salter told me he had a conference with Mr. Chichester and that after this conference he ordered the liquor destroyed, and I propose to prove that.

THE COURT: It will be necessary to reframe the question, if any impeaching question is to be propounded, by making it more definite as to the time and place and parties present.

MR. SCHLEIMER: At the present time, I am not impeaching. I am interrogating on the letter he wrote, which is in evidence, and I believe that I have that

(Testimony of Charles W. Salter)

privilege to interrogate the witness as to what he meant by that phrase.

THE COURT: Suppose we go ahead with the matter. The court suggested that the question, along the line propounded to the witness, may be reframed, and in so doing it shall be fairly specific as to the time and place and parties present.

BY MR. SCHLEIMER:

Q Do you recall that I had a conference in your office?

A Very distinctly.

Q Have you any memorandum of the date of that?

A No, sir.

Q Do you recall who was present at that conference?

A You were there. Mr. Mitchell, I believe, brought the seizure records to my office, and I was there.

Q And do you recall also sending for Mr. Minick, the clerk, the Chief Clerk of the Marshal's office?

A Not at that time.

Q It was later in the conference, is that right?

A I believe I did either go to his office or asked him to come to my office. I don't recall which, but that was subsequent to the time when you first came in to my office.

Q That was the only time that I had a conference with you, is that right?

A No.

Q Any other conference?

A You came in once or twice after that.

(Testimony of Charles W. Salter)

Q That was in relation to the "Patricia" matter or another matter?

A In relation to the "Patricia" matter.

Q And the conference that I have reference to was the first one?

A Yes, sir.

Q Have you any way of fixing the time when that took place?

A No, I have not.

Q Now—

A (Interrupting) Wait a minute. I can't give you the date, but you may be able to fix it. It was, as I understood from the statements which you made, it was subsequent to the hearing had in this court, prior to any actual decision having been made.

Q Did you at that conference state to me that the liquor was destroyed?

A Except the five cases, yes.

Q And did you at that time state to me that before the liquor was destroyed you advertised in the Times?

A Yes, sir.

Q And did you at that time also state to me that you conferred with the United States Attorney before you destroyed the liquor?

A I don't think so.

Q What is your best recollection about that?

A No.

Q What?

A No.

(Testimony of Charles W. Salter)

Q Now, in this letter of July 8th, 1933, Government's Exhibit 4, of this date, you state at page 2 as follows:

"Prior to directing the destruction of this liquor communication was had with the United States Attorney's office with a view to determining what quantity, if any, was desired by that office to be held as evidence to be presented to the court."

Does that refresh your recollection as to whether or not you had communication with the United States Attorney regarding the destruction of the liquor?

MR. IRWIN: I am again going to ask the court's indulgence. The witness has testified that that matter was handled by a clerk in his office.

THE COURT: Will you let the witness answer it again.

THE WITNESS: The communication which may have been had or was had, no doubt with the United States Attorney's office, had no regard to the destruction of the liquor. It was for the purpose of ascertaining whether or not, and if so, how many cases the United States Attorney's Office would desire should be retained for evidence at the trial of the criminal case.

BY MR. SCHLEIMER:

Q You had that communication in writing or verbal?

A As I said before, to the best of my recollection that was verbal.

Q Did you confer with Mr. Chichester at any time about the criminal or civil case?

A No, sir, I am quite sure I did not.

(Testimony of Charles W. Salter)

Q Did he call at your office and have an interview with you?

A No, sir.

Q Did he 'phone you?

A Sir?

Q Did he 'phone you?

A So far as I recall, with relation to this case, no.

Q Was it with relation to the criminal case?

A No.

Q You do not recall that?

A No, sir.

Q Now then, you say further in this letter of July 8, 1933, Government's Exhibit 4 of this date, that the liquor was ordered destroyed on September 13th, 1932 and was not actually destroyed until February 9th, 1933. Is that correct?

A That is correct.

Q During that period of time had you learned of the pendency of this action or the criminal action?

MR. IRWIN: Objected to as incompetent, irrelevant and immaterial, and a deliberate attempt to mislead the court and the witness, because he skipped the whole explanation as to the circumstances between the date of the order of the forfeiture and the date of destruction of the liquor.

MR. SCHLEIMER: Will you let me try my case in my own way?

MR. IRWIN: I am interposing an objection on that ground.

THE COURT: I don't see what that has to do with it, Mr. Irwin.

(Testimony of Charles W. Salter)

MR. IRWIN: Very well, your Honor, I withdraw the objection.

(Question was read by the reporter.)

A I presume I had, because I had signed letters to the United States Attorney, requesting the institution of forfeiture proceedings against the vessel.

BY MR. SCHLEIMER:

Q Were you familiar with the various provisions of the practices, relating to the Government's attorney to institute actions of that character?

A Yes, sir.

THE COURT: What has that got to do with this hearing?

MR. SCHLEIMER: Your Honor has received this letter in evidence, and by this letter they propose to bind us by this gentleman's opinion on the stand that the United States Attorney has made an error, in that in the libel suit he inserted the word "cargo", and this gentleman finds fault with that, that he should not have inserted the word "cargo", but should have left it out, and he expresses an opinion on the law and on the statute as to what the United States Attorney should have done. And they propose to bind us by that letter, and we want to interrogate him as to the contents of this letter and to show to the court the actual facts as they existed.

THE COURT: Counsel will be at liberty, of course, to bring out the facts, but not to conduct a school of instruction interrogating this witness as to what he does or does not know about the law.

(Testimony of Charles W. Salter)

MR. SCHLEIMER: This is the letter which is in evidence as binding upon us as to his opinion and construction of the law, and it is an indirect way to express an opinion, or a direct way to express an opinion that the United States Attorney who had charge of the case was supposed to have made an error, but we claim he did not.

THE COURT: That is a matter of argument.

MR. SCHLEIMER: I want to cross-examine him, because under the statement it is not what he instructed him to do, but as to what the United States Attorney was of the opinion was the right thing to do. In other words, he could have instructed him to bring only the libel on the vessel, and yet the United States Attorney would have the right to bring a libel on the vessel and the cargo also.

THE COURT: All of this discussion serves to prove that we ought not to spend time in interrogating the witness as to the legal effect of any action or the substance of the opinion of the witness expressed in that letter.

MR. IRWIN: I only offered that letter to show a summary of what steps were taken by that office, and not his opinion.

MR. SCHLEIMER: Then if that is the case, I ask your Honor at this time to strike out from the evidence the entire Exhibit 4 of this date. Not only does it contain self-serving declarations, but it is also incompetent and contains hearsay evidence and opinions.

THE COURT: Well, so far as the document contains opinions as to the law, obviously the court will be governed not by statements of the document, but by what

(Testimony of Charles W. Salter)

the law is. Now, let's go ahead and proceed with the taking of evidence.

MR. SCHLEIMER: Do I understand your Honor denies my motion?

THE COURT: Yes.

MR. SCHLEIMER: May I have an exception please?

THE COURT: Yes.

BY MR. SCHLEIMER:

Q Have you a copy of the advertisement that was inserted in the newspapers?

A I haven't it with me.

Q Did you procure any order from any court or judge authorizing you to destroy the liquor?

MR. IRWIN: Objected to as entirely incompetent and immaterial, because he says the liquor was taken under Section 607 revised statutes, and that sets forth the matters to be done.

THE COURT: In other words, it is not claimed that the Collector of Customs acted under any court order?

MR. IRWIN: Certainly not, your Honor, with the one exception of the ultimate disposition of the five cases which were held as evidence, they were later disposed of.

THE COURT: Yes.

MR. SCHLEIMER: Another department of the Government, who is charged with enforcing the law, has filed a lawsuit here against the vessel and the cargo of liquor, and who had a legal right to file such a lawsuit.

THE COURT: Right here, Mr. Schleimer, there seems to be difficulty in apparently either the court understanding counsel or counsel understanding the court.

(Testimony of Charles W. Salter)

Counsel asked a question as to whether or not a court order had been obtained. That question has been answered by the admission of Government counsel. Now, let's proceed, not to argue a question that has been answered, but proceed to introduce any evidence, if you have.

MR. SCHLEIMER: Counsel for the Government did not answer it directly, he said that they advertised. Now, my question called for a specific answer whether or not there was an order obtained.

THE COURT: There was an admission by Government's counsel that no order was obtained from the court.

MR. SCHLEIMER: If that is your Honor's interpretation, I have no further question.

THE COURT: That is perfectly plain what counsel said.

MR. SCHLEIMER: He did not say it in so many words.

MR. IRWIN: The Government admits that no court order was obtained for the destruction of that liquor; that the collector of customs claims he destroyed that under Section 607 of the revised statutes, and other than the 5 cases that were held as evidence, there was no court order had.

MR. SCHLEIMER: May I ask you whether that was done after the filing of the libel in this proceeding?

MR. IRWIN: What was done?

MR. SCHLEIMER: The destruction of the liquor under the manner you just stated.

MR. IRWIN: Which liquor?

(Testimony of Charles W. Salter)

MR. SCHLEIMER: That which was seized on the boat.

MR. IRWIN: It is in the record that it was ordered destroyed on February 9th, 1933. By simple manner of mathematical calculation that is subsequent to the time the libel was filed.

MR. SCHLEIMER: The letter says September 13th, 1932.

MR. IRWIN: But this shows it was never actually destroyed until February 9th, 1933.

MR. SCHLEIMER: That is all.

REDIRECT EXAMINATION

In answer to MR. IRWIN:

The conversation between me and counsel about that liquor when he called at my office he wanted to have the liquor returned to him, because the boat was going to be returned to him. He had been directed by the court, as I recall it to—I don't know what the legal term would be, but to draw some conclusions of the court, and he wanted the liquor returned, and I told him, after consulting the records, that it had been destroyed, and then he suggested that a substitution could be made that would meet with his approval, in the event we had other types of liquor, and I told him that was out of the question entirely, and his further direction was that if he could not get the liquor for his client, he would bring an action against the Collector.

MR. IRWIN: That is all.

MR. SCHLEIMER: No further questions.

THE COURT: We will take a recess for five minutes.
(Witness excused.)

(Thereupon a five minute recess was taken.)

THE COURT: Are you ready to proceed?

MR. IRWIN: May it please the court, at this time, on behalf of the Libelant, I believe the points have been covered that were set forth in the Minute Order by your Honor. At this time the Government has no further evidence to offer.

MR. SCHLEIMER: At this time I offer in behalf of the Claimant and Respondent the judgement roll in the case of the United States of America against Frank Oreb, S. Hirota and T. Tomikawa, known as No. 10,898-H.

MR. IRWIN: To all of which objection is made on the ground it is immaterial and not having a proper foundation laid and immaterial to prove any of the issues in this action.

MR. SCHLEIMER: May it please the court, I have called the court's attention, in several briefs I have submitted, and I have urged right along that the court may take judicial notice of this judgement. Now, at this time, I offer in evidence the judgement roll so there will be no question that this has not been called specifically to the attention of the court.

THE COURT: The objection to the offer is sustained and an exception may be noted.

MR. SCHLEIMER: I ask that it be marked for identification.

THE COURT: Let it be marked as Claimant's Exhibit A for identification in this hearing.

The said exhibit was marked "A" for identification and consists of the following, to-wit:

Indictment, No. 10,898-H, filed on March 4, 1932, against T. Tomikawa, S. Hirata, and Frank Oreb. Said indictment is in three counts. (1) Conspiracy to import intoxicating liquors; (2) Conspiracy to violate the National Prohibition Act; and (3) Violation of the Custom Laws. Special appearance, objections to the jurisdiction of the court and motion to quash said indictment, filed May 16, 1932. Minute order made on May 20, 1932, overruling the objections made to the jurisdiction of the court and denying the motion to quash said indictment. Notice of motion, dated April 4, 1933, to set aside said minute order made on May 20, 1932, and to reopen said motion to quash said indictment and to quash said indictment. Said motion was based upon the affidavits of Toichi Tomikawa, Shinajira Hirata, Frank Oreb and Max Schleimer, all sworn to April 4, 1933, filed April 4, 1933, and was also based upon the evidence taken on the hearings in said libel proceeding, No. 5567-H, and minute order made in said libel proceeding on March 30, 1933. Said judgment roll also contains a minute order made on April 24, 1933, granting said motion to set aside minute order made on May 20, 1932, and reopening said motion to quash said indictment and quashing said indictment and exonerating the bail given by said defendants. Said judgment roll also contains a certificate of the clerk, dated June 2, 1933, to the effect that said judgment was entered in Law & Gen. Book 81 & 84, p. 158 & 993.

MR. SCHLEIMER: At this time, may it please the court there has been a slight misunderstanding here, and

I want to straighten it out now for once and all. There was a stipulation dated March 7, 1934. Your Honor will remember that a few days before March 7, 1934 the matter was on your Honor's calendar, and he ordered that the matter be continued for the purpose of taking proof as to the residence of the claimant, Toichi Tomikawa, and suggested in open court that counsel may get together and may agree to a stipulation, and may submit it to the court on that fact, and then it would not be necessary to take any other evidence. Mr. Irwin was present at that time, and we stepped out into the corridor and discussed that matter, and I told him what I proposed to insert in the stipulation, and he said he would sign it if I prepared such a stipulation. I prepared four copies of the stipulation, and had my client sign it, and on the 7th of March I contemplated to fly east to visit my sick son in the east, and I brought down three copies, the original and two carbon copies of the stipulation, and I explained the situation to your Honor's Secretary. She suggested that I leave those stipulations, and she would get in touch with Mr. Irwin, because I had been up in the District Attorney's office in the morning, and he was not there, and was not expected until late in the day. I left the stipulations there, and when I returned from the east I found that Mr. Irwin did not sign the stipulation, and I could not find the stipulations, and I communicated with the United States Attorney's office, and they said they did not know anything about it, and did not see anything about it, and the files did not show it, and finally one day I called on Mr. Utley and he sent for the file, and there, near the top of the file, I found the two stipulations. The third

one has never been found. However, I have the claimant here for the purpose of proving the actual facts that are included in that stipulation. My impression is that some part of it is in the record, but not all of it. Since your Honor called for it, and since we prepared that stipulation, I think the record should show that. Now, if Mr. Irwin will stipulate to the facts, well and good. If not, I have only about 6 or 7 questions to ask of the claimant, and I will ask the privilege to do so.

MR. IRWIN: To all of which, first of all I wonder if the court can rely on the statements as to my representation to Mr. Schleimer any more than we can as to his representation as to that court order being in the file this morning, made by Judge James, ordering the destruction of the liquor.

THE COURT: Right here, may we suggest we may make some progress if counsel will state whether or not such a stipulation will be entered into, and if not, it will be necessary to go ahead with the proof.

MR. IRWIN: No, your Honor, and I think I should say to your Honor, in all brevity, that I told Mr. Schleimer were a stipulation presented which covered the facts as I understood them, I would gladly consent to sign it. A stipulation sometime later reached my desk from your office, and I all I have to do is to present the stipulation to your Honor to show that I could not sign it.

THE COURT: In other words it did not contain the matters that you understood?

MR. IRWIN: Yes. And I called Mr. Schleimer's office, and he was in the east.

THE COURT: Go ahead with the evidence then.

MR. IRWIN: If it is proposed to follow the terms shown in that stipulation, I think I should be permitted to object at this time, because it will take the matter outside of some things that the Government bases *it's* claim on. This is outside of what your Honor's Minute Order shows. If your Honor will glance at that stipulation, the bottom ten lines, I think you will see.

THE COURT: In other words, that the court may be able to follow the position of counsel, Government counsel, with reference to the objection to the stipulation, suppose you indicate your understanding of what the stipulation was to contain. Can you do that?

MR. IRWIN: I can do that, your Honor. We were in open court here and my understanding was we would try and get together and agree on a stipulation of facts which would bring this matter down to save your Honor labor. There was no discussion of any particular facts, to my knowledge, to be included in that stipulation. All I received was one day that stipulation asking me to stipulate that this claimant was and has been for years past, domiciled and a resident of Japan. Now, Mr. Parker suggests that I withdraw my objection to this at this time, and go ahead with the proof.

THE COURT: Very well, go ahead with your proof, Mr. Schleimer.

MR. SCHLEIMER: Mr. Tomikawa, come forward.

(Testimony of Toichi Tomikawa)

TOICHI TOMIKAWA,

the Claimant called as a witness in his own behalf, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

In answer to MR. SCHLEIMER:

My name is Toichi Tomikawa. I am the claimant in this case. I was born December 1, 1891, in Japan, in the city of Osaka. My parents are Japanese. I am not an American citizen. I came to this country May 13, 1929, from Yokahama, Japan. I had a passport when I came here. I have got that passport with me.

(Witness produces document and hands same to counsel.)

I am married. My wife's name is Sumi. I was married 13 years ago in Japan. I have one child, a boy, name Hiroshi. They live at No. 90 Ikadacho, Mishinomiya. That is the name of the city; province of Hyozo. That is in Japan?

Q And is that your domicile there?

A Yes, sir.

THE COURT: Now, just a minute. Let the answer go out. What is or is not a domicile, under this proceeding becomes a question of law.

BY MR. SCHLEIMER:

Q Is that where you live?

A Yes, sir.

Q That is your home?

A Yes, sir.

(Testimony of Toichi Tomikawa)

Q That is where your family lives?

A Yes, sir.

In answer to MR. SCHLEIMER:

I lived there more than 11 years now. I landed in San Pedro May 13, 1929. I have a place where I stay in San Pedro. It is 241-A Albicore Street.

THE COURT: How long have you been living at San Pedro?

THE WITNESS: Since I come from Japan.

BY MR. SCHLEIMER:

Q The Judge wants to know how long you lived in San Pedro?

A Since I come from Japan.

Q How many years is that?

A About five years.

Q Now, is that your permanent home in San Pedro, or is your permanent home in Japan?

MR. IRWIN: Object to that.

THE COURT: Let him answer.

THE WITNESS: In Japan.

BY MR. SCHLEIMER:

Q Japan is your permanent home?

A Yes, sir.

Q And you are staying there while you are in this country, is that right?

A Yes, sir, temporarily I am living—

Q In San Pedro while you are in this country, is that correct?

A Yes, sir.

(Testimony of Toichi Tomikawa)

In answer to THE COURT: I came to the United States May 13, 1929. I have not been back to Japan since then. I have been living in San Pedro, California since May of 1919. I made my living since I came to the United States fishing. I have been in the fishing business sometime for myself and sometime for others. I have been in the fishing business all my life. Since I came to this country I do fishing and never do anything else. Since I arrived, I get the boat named Orient and started fishing. That was about October, 1928. I was in the United States in 1928. I sailed out in December of 1928 to Japan, and returned to this country with that passport next year, May 13, 1929. After I came back to the United States in May of 1929 I again went into the fishing business for myself. That is the only business I have been doing since May, 1929. After next year, January, we go to join another man and got San Lucas. I mean about January 1930 I joined another man as a partner. And the three of us went into the fishing business. One operated a boat; the name of that other boat was San Lucas. When we were not using that boat to fish we tied up at Fish Harbor, at San Pedro about half a year. Orient was 34 feet long and has Fairbanks-Morse 30 horse engine. Its tonnage, I think was about six or seven tons; that was the first boat that I operated after May, 1929. From May 29 I operated the Orient. I owned the Orient; she was about 40 feet long and 30 horsepower. Its tonnage was six or seven tons. When I was not fishing on that boat I kept the Orient tied up at San Pedro; the first boat that I operated after May, 1929 was the Orient and the next boat was the San Lucas.

(Testimony of Toichi Tomikawa)

We made order for San Lucas and it was all completed on September, 1930. And then I started to operate it. We operated the San Lucas that year and the next year. Next year, that is 1931, November, we get orders not to run out to any high sea boats to get the fish, and we tied up two or three months. That is the order from the cannery. The cannery gave me orders not to operate any more high sea boats, so I quit from November, 1931 until the spring of 1932. The two partners that I had operating the San Lucas were Japanese. One time after orders come from cannery, the fish price was going down, and so I quit the partnership in the boat in November, 1931; from November of 1931 until the Spring of 1932 I was working at Ensenada; Ensenada Cannery. I caught some fish for the cannery at Ensenada. It is a cannery boat that takes them, fishermen. I have a contract. I had a contract to supply fishermen to work on a boat belonging to the cannery at Ensenada, Mexico. I was supplying these men for the cannery until the spring of 1932. Spring is the time for sardines, so I sometimes come to this country to get supplies for the boys that are fishing, in the spring of 1932. In December of last year I come back to get them, and ever since that time I be in Ensenada. I mean in December of 1931 I came back to get some supplies for these fishermen working for the cannery at Ensenada. I bought the Patricia in March, 1932. In March, 1932 I bought this boat Patricia that was seized in connection with this lawsuit. I don't know exactly the date. I bought this boat at San Pedro from K. Ogawa. I repaired the Patricia's engine, some part of the engine was not in running condition, so I repaired

(Testimony of Toichi Tomikawa)

it. I had the engines repaired. It is 100 horsepower Fairbanks, C. O. type. I bought Patricia to capture sardines, and fix the side of the boat for catching sardines. I took the boat Patricia down to Ensenada; that's the main purpose I buy, and send it to Ensenada to make fishing in the future with the boys. The engine was in bad condition so we fix it. I bought the Patricia at San Pedro; then I went with the boat away from San Pedro; after I left San Pedro in March, 1932 I went to San Diego to get some nets from a friend of mine. I went to San Diego to get some net. I come back to San Pedro. Then I sailed with the boat from San Pedro to San Diego; I got some nets there at San Diego; then I started back from San Diego to come to San Pedro again. That my intention was to go to San Diego but before I go to San Diego the engine was wrong, and very strong west wind blew up, and we sail out to San Diego. So we happened about one day and the night floating, because engine condition isn't good.

The Court:

Q Let's see. On your way down from San Pedro to San Diego did the engines get out of order?

A Bad order.

Q Before you got to San Diego?

A Yes, sir.

Q And the boat floated around for about a day and a night?

A Yes.

Q And then did you finally get to San Diego?

A No, I suppose it is away from San Diego, we couldn't see the mainland exactly.

(Testimony of Toichi Tomikawa)

Q While the boat was at sea, on the way from San Pedro to San Diego, did the engines get out of order?

A Yes, but that is the condition we suppose we can repair.

Q You tried to repair it at sea?

A Yes, sir.

Q Well, now, after you repaired it at sea what did you do with the boat?

A We tried to get the engine in good condition.

Q Where did you take the boat?

A From the point where the engine stopped, we tried to come back to San Pedro.

Q Well, did you ever take this boat to San Diego?

A Never in there, no.

Q You never got into San Diego with this boat?

A No.

Q Then you never got these nets from your friend in San Diego?

A No.

Q But while you were on your way from San Pedro to San Diego the engines got out of order, is that right?

A Yes, sir.

A And you tried to fix the engines?

A Yes, sir.

Q And then, instead of going on to San Diego, you started to come back to San Pedro, is that right?

A Yes, sir.

Q And while you were on your way back from there to San Pedro the Customs Guard seized your boat?

A Yes, sir.

(Testimony of Toichi Tomikawa)

Q That is when it happened, is it?

A Yes, sir.

Q Well, where did you get this liquor that was on the boat?

A I never saw it in my life, the boat come up to us.

Q I don't think we understand you. Do you remember the Coast Guard Officer came on your boat?

A Yes, sir.

Q And do you remember the Coast Guard found about 1,749 cases of liquor on the boat? Do you remember that?

A I don't know how many cases of liquor was loaded.

Q Well, there were a lot of cases of liquor on the boat?

A Yes.

Q Do you remember the Coast Guard officer found them in the boat?

A Yes, Sir.

Q Where was that liquor put on the boat?

A About two hours distance where he seized the boat. That is the place another boat tried to make room on that boat, because that boat almost sinking down, so much overloaded.

Q Do you mean about two hours before the Coast Guard *sized* you?

A No, two hours distance from the point where the Coast Guard seized us. That means between ten and fifteen miles south from that place.

MR. SCHLEIMER: He says two hours travelling from the place where the Coast Guard seized the boat.

(Testimony of Toichi Tomikawa)

THE WITNESS: That's the place where our engines stopped.

THE COURT: While you were stopped at sea another boat came alongside with some liquor?

A Yes, sir. I don't know what it was. It was early morning and couldn't see very well.

Q Another boat came along and stopped alongside of your boat?

A Yes, sir.

Q All right; now then, what happened when the other boat came alongside of your boat?

A Overloaded, so want us to help.

Q Do you mean somebody on the other boat said they were overloaded, and that they were afraid their boat was going to sink?

A Yes, sir.

Q And they wanted you to help them, take some of the cargo off of their boat?

A Yes, sir.

Q And you agreed to help them take some of the cargo off of their boat and put it on your boat?

A Before I say yes or no they tried to make load while the boats are rocking. So I couldn't refuse, I didn't have any gun.

Q You did not have any gun on your boat?

A Nothing.

Q Did they tie this boat alongside of your boat?

A Yes, sir.

(Testimony of Toichi Tomikawa)

Q And while the two boats were tied together they carried some of their cargo from their boat onto your boat?

A Yes, sir.

Q And that is the cargo which the Coast Guard Officer found on your boat, is that right?

A Yes, sir.

Q Now, this other party on this other boat told you he was afraid that their boat would sink?

A Yes, sir.

Q What did he tell you to do with the liquor?

A Keep it about the same place and "I will come back the next night." That is what he say. "We know this boat, so if you go anywhere we can get you. So keep this place until we come back next night."

Q Now, how long before the Coast Guard Officer seized your boat did they put this cargo on your boat? How long before?

A The same morning early.

Q The same morning early?

A Yes.

Q And when these people came, these people on this other boat came alongside of your boat, before they put any cargo on, you were on your way back to San Pedro, is that right?

A Yes, sir.

Q And then after they put this cargo from the other boat onto your boat, what did you do with your boat?

A We tried to keep the same pace, so we do not run the engine, and float a long time, until eleven o'clock the same day in the morning.

(Testimony of Toichi Tomikawa)

Q Well now, after the other boat left you did not have to stay there did you?

A I didn't run the engine at all after they loaded.

Q Did you know the people on this other boat?

A Never know them.

Q All right, so after they left you, why didn't you come on back to where you were going, to San Pedro? What were you afraid of then?

A Afraid of these people.

Q What?

A I afraid of these people.

Q You were afraid of them when they were not there near you?

A I afraid the people of the boat, the other boat.

Q Well, they were gone, there wasn't anything to be afraid of after they were gone was there?

A But the Patricia can't hide, so when they look around for me they can find out easy. You see they say, "You do nothing and say nothing."

Q Now, when the Coast Guard Officer came on your boat did you tell him that you were afraid of the people on another boat?

A They didn't ask some questions.

Q Well, did you tell them where you got this cargo that was on your boat, did you explain that to the Coast Guard Officer?

A Yes.

Q What did you tell him?

A That is more than three years and a half ago, and don't remember maybe what I said. But when they coming, they excited themselves, and tie up the boat.

(Testimony of Toichi Tomikawa)

Q Well now, when you were with the Coast Guard Officer were you afraid of anybody else?

A Well, I afraid of anybody come to us.

Q Well now, did you ever hear any more from these other people?

A No.

Q Nobody else ever came to see you about this other cargo?

A No.

Q And these people that you say you were afraid of, on the other boat, you have never seen them any more?

A No.

Q Never heard from them any more?

A No.

Q Are you still afraid of them?

A I don't know what I may say.

Q Well, after the Coast Guard Officer seized your boat and took this cargo, why then didn't you tell the officers about this story of them stopping you on the high sea and putting their cargo on your boat, why didn't you tell them then?

A They didn't ask me.

Q You knew you were arrested, didn't you?

A Yes.

Q You knew you were liable to get in trouble didn't you, didn't you know that?

A Yes, sir.

Q To protect yourself why didn't you tell the Officers how this cargo got onto your boat?

A All of these people excited, they never ask me, and no chance to explain this until today.

(Testimony of Toichi Tomikawa)

MR. SCHLEIMER: Just a moment, I want to ask one question.

MR. IRWIN: I haven't had any cross examination yet.

MR. SCHLEIMER: Just one or two questions.

THE COURT: Go ahead, Mr. Schleimer.

BY MR. SCHLEIMER:

Q When the Coast Guard people got on board, did they have guns in their hands?

A Yes.

Q And did they put them up against you and take you off, on the other boat?

A Yes, sir.

Q Did they allow you to talk to them?

A Oh yes, they excited themselves with guns.

Q Listen to me. Did you talk to the Coast Guard men, did they allow you to talk to them?

A I didn't trust any people.

Q What do you mean by that?

A So I keep quiet, as they say.

Q But I am asking you, did you want to talk to the Coast Guard people, did they let you talk to them?

A No, I didn't ask.

Q They wouldn't let you talk?

A They excited.

Q They were excited. Now, when these people on the high seas came over with their boat and tied their boat to yours did they say anything about paying you for keeping the liquor on board?

A No, I didn't hear anything about it.

(Testimony of Toichi Tomikawa)

Q You didn't say anything about it?

A I like to save my life.

Q You liked to save your life?

A Yes.

Q You were afraid?

A Yes, sir.

Q How far out to sea was that?

A From where?

Q From the nearest point to any coast of the United States?

A I suppose 15 miles.

Q How much?

A Fifteen miles.

Q Fifteen miles?

A From shore of the United States. That is almost south of San Pedro.

Q When you said 15 miles, what did you mean by that.

A Fifteen miles distance from the nearest, from the land of the United States.

Q Was that the place where the Coast Guard seized the boat?

MR. IRWIN: I object to this line of questions. This man has not been qualified as an expert navigator.

THE COURT: Let him go ahead.

MR. SCHLEIMER: I have no further questions. You may cross examine.

(Testimony of Toichi Tomikawa)

CROSS-EXAMINATION

BY MR. IRWIN:

Q How long had you lived in this country before you went back to Japan in 1928?

A I think five years I stayed before I sailed out the second time.

Q Before you what?

A Before I sail out in 1928.

THE COURT: Do you mean you had been living in the United States about five years before you went back to Japan in 1928?

THE WITNESS: Yes, sir.

BY MR. IRWIN:

Q What business were you in during that five years, fishing?

A Yes, sir.

THE COURT: Where were you living during those 5 years?

THE WITNESS: The same place, Terminal Island.

THE COURT: That is San Pedro, isn't it?

A Yes, sir.

BY MR. IRWIN:

Q Were you in the fishing business in Japan?

A No, I was too young to do that.

Q You have only been in the fishing business in this country?

A Yes, sir.

(Testimony of Toichi Tomikawa)

Q Did you live at San Pedro all the time you have been in the fishing business?

A Yes, sir.

Q You remember being on the stand here in this court, before, don't you?

THE COURT: Don't ask him that, we know he was.

BY MR. IRWIN:

Q Do you read English, Mr. Tomikawa?

A A little.

Q You were asked these questions before:

"How long have you been a master on a vessel," and you said "What boat?"

"Q Beg pardon?"

"A What boat?"

"Q Any boat on the coast here." and you said, "I have been fishing more than 15 years operating boats, and I was, on it, the master and operator my own self." Is that a fact?

A Yes, sir.

Q Is it true that you let the boat drift all that day?

A Yes, sir.

Q Then you never saw this cargo of liquor before that morning, is that right? You never saw the liquor until this other boat asked you to take it on your boat, is that right?

A Oh no, we never, because I didn't see what they had in that sacks, but by the smell I know what it was.

Q You never saw those sacks before that morning, is that right?

A No, I never know.

(Testimony of Toichi Tomikawa)

Q And they were not yours were they?

MR. SCHLEIMER: One moment please. I object to the question on the ground it is incompetent, irrelevant and immaterial and not within the issues, and on the further ground that as the master of the boat, they were placed in his possession, and he has certain rights in the cargo, certain privileges and certain titles. That is a question of law and not for the witness to interpret.

MR. IRWIN: This is the Claimant of this cargo, and he is claiming he was just keeping it and was going to drift there over night until they came back for it the next day.

THE COURT: He may answer.

MR. SCHLEIMER: Exception.

BY MR. IRWIN:

Q Did you understand my question, Mr. Tomikawa? Those sacks that were transferred to your boat did not belong to you, did they?

MR. SCHLEIMER: Same objection.

THE COURT: The witness may answer.

MR. SCHLEIMER: Exception.

BY MR. IRWIN:

Q What is your answer?

(Question is read by the reporter.)

A Well, any article an owner put on the deck of the boat belongs to the Captain.

Q Who told you that?

A I know that.

THE COURT: The people from the other boat did not give you any of this cargo, did they?

(Testimony of Toichi Tomikawa)

THE WITNESS: No.

Q They did not tell you to keep it, did they?

A Yes.

Q What did they tell you to do with it?

A They want to keep the same place, to keep the cargo.

Q They told you they were coming back to take it away from you, didn't they?

A Yes, they told they want to keep this cargo until they come back.

Q And you were willing to wait there and let them take it away again, weren't you?

A I am not willing.

Q Well, you say you stayed there for the purpose of having them come back and take it away?

A Yes.

Q You did not want to keep any of it?

MR. IRWIN: May the record show the witness shaking his head no.

THE COURT: Did you intend to let these men take that cargo away if they came back?

A Yes.

Q You were not going to keep any of it?

A I like to get out of this trouble. That is what I like.

Q Well now, when the men put this cargo on your boat did you know what it was, did you know it was liquor?

A No, I did not know, only what he told us.

(Testimony of Toichi Tomikawa)

Q After the men on the other boat went away did you find out that the cargo consisted of liquor?

A Yes, he told. I didn't open the hatch.

Q What's that?

A I didn't open the hatch, so I didn't know. But I suppose by smell.

Q Oh, you could smell that it was liquor, is that right?

A But I didn't see.

Q After the men put the liquors on the boat you could smell that it was liquor, even though you didn't go down and examine it, you could smell it was liquor, couldn't you?

A Yes, can't tell.

Q You couldn't tell what size it was. They put it on the boat that morning?

A They load themselves.

Q After they went away you could smell the liquors on the boat?

A Yes, sir.

Q Is that when you decided that you might get in to trouble, if you had that?

A Well, on high seas any American has no right to attack us on the high sea, so I keep the place on the high sea.

Q When did you think that you might get into trouble over this cargo? When did you think that you would get into trouble over the cargo? You said a little while ago that you were afraid that you might get into trouble over this cargo?

A Yes, sir.

(Testimony of Toichi Tonikawa)

Q When did you make up your mind that you might get into trouble over the cargo?

A I don't get what you mean.

MR. SCHLEIMER:: The judge wants to know, you told the judge before that you were afraid that you would get into trouble.

THE WITNESS: Yes, sir.

Q The judge wants to know when did you make up your mind, when did you decide that you might get into trouble?

A I don't know what you said.

Q Well, you told the judge you were afraid of these people, that you would get into trouble.

A Yes.

Q When did that happen, when you were afraid?

A Since they loaded it.

Q Since when?

A Since they loaded the cargo on the Patricia.

Q At that time you became afraid?

A Yes, sir.

Q Is that it?

A Yes, sir.

Q Was it at that time that you became afraid?

A Yes, sir.

MR. SCHLEIMER: Does that answer your Honor's question?

THE COURT: Yes.

BY MR. SCHLEIMER::

Q Now, did you intend to bring the cargo with the liquor to San Pedro? Listen to me, what I am asking

(Testimony of Toichi Tomikawa)

you. After the liquor was on the Patricia, did you intend to bring that to San Pedro?

A What for?

Q I am asking you did you intend to do that or did you intend to stay out there?

A I had no intent to approach the main land.

Q What was your intention?

A My intention to keep the boat about the same place.

THE COURT: How long did you intend to stay there?

A Until the next night that they talked to me you see.

BY MR. SCHLEIMER:

Q What do you mean by that? They told you they would come back the next night?

A Yes.

Q So you expected to stay there. Now, while you were out at sea there were your engines in the boat running, or was your boat drifting?

A At that time just running the air compressor.

Q How about the engines?

A Engines not start. We lose the air to start the engine, so we start the air compressor with very small engine.

Q Were you drifting at that time?

A Yes, sir.

Q Which way was the tide going?

A Southeast.

Q How was the weather?

A That night was blowing west.

Q I am talking of the condition of the weather.

A Weather was not clear.

(Testimony of Toichi Tomikawa)

Q Now then, when they put the cargo on your vessel how far were you from the nearest coast land?

A We are running usually about 15 miles from the beach.

MR. SCHLEIMER: That is all.

BY MR. IRWIN:

Q How much did you pay for the Patricia?

A Eight thousand dollars.

Q How much was that?

A Eight thousand dollars.

Q And did you pay cash for that?

A Yes, sir.

Q That was in March of 1932, March 10, 1932?

A About, I don't remember exactly the date.

MR. IRWIN: That is all.

THE COURT: What was the tonnage of the Patricia?

A I think she carried about 43 tons.

MR. SCHLEIMER: Your Honor has the expert's affidavit in the record as to the length of it, and tonnage and everything.

THE COURT: That is already in the record?

MR. SCHLEIMER: Yes, that was at the time your Honor opened the case on my motion for that purpose of showing that in the record.

THE COURT: That is all.

MR. SCHLEIMER: I will take the stand.

(Witness excused.)

(Testimony of Max Schleimer)

MAX SCHLEIMER,

called as a witness in behalf of the Claimant and Respondent, having been first duly sworn, testified as follows:

THE WITNESS: My name is Max Schleimer. Do you want me to put questions or make a statement, Mr. Irwin?

MR. IRWIN: I want to call the court's attention to the rule in the Federal Courts that when an attorney testifies in the case pending before the court, he can make no further arguments before your Honor.

THE COURT: That may apply to oral arguments, but he can give us a memorandum and citations.

MR. IRWIN: Yes, I just as soon you make a statement.

THE WITNESS: If there are any objections I will interrupt. The statement that I wanted to make is that I called on the Assistant Collector for the purpose of ascertaining where the cargo was stored, because I tried to get the information in the main office. So he sent for the record and he asked for what purpose I wanted the information, and I said that I wanted to use it for the purpose of preparing my findings, and he sent for the record and told me that the—

MR. IRWIN: (Interrupting) Just a moment. I am going to object to the further statement about this matter at this time, inasmuch as it was offered for impeachment, because there was no proper foundation laid in that the time of this alleged visit has not been set

(Testimony of Max Schleimer)

forth, and particularly I think we might be favored with the time element.

THE COURT: Well, you might look at the file.

THE WITNESS: I could not recall it. That was the time that the assistant collector on the stand testified that I had the first interview. I never had an interview or saw him in my life before. I can not recall the date.

THE COURT: Can you tell whether it was in 1932 or in 1933?

A To the best of my recollection it was after your Honor had made a minute order in which you ordered judgment for the Respondent and Claimant. It was after that, and it was sometime before I prepared the proposed findings. I never asked him for the return of the cargo. All I asked him was to give me the information as to how many sacks there were, and the nature of the liquor, and where they were stored, so that I could insert that in the findings. And at that conversation he told me the liquor had been destroyed, and I asked him by what authority.

MR. IRWIN: May it be understood that pending the determination of the date, inasmuch as it is direct impeachment of the Assistant Collector's testimony, my objection goes to it.

THE WITNESS: He said I demanded a return, and I deny that I demanded a return. I wanted to know where it was stored.

THE COURT: The record here shows that under date of March 30th, 1933 a Minute Order was made vacating the previous order, or denying the motion of Claimant and Respondent to quash and dismiss the pro-

(Testimony of Max Schleimer)

ceedings and directing that the libel against the vessel be dismissed.

THE WITNESS: I believe my best recollection is it was shortly after this order.

THE COURT: Do you think then sometime in April of 1933 you had a conversation with Mr. Salter?

A Yes, sir.

Q In his office here in this building?

A Right on this floor, right in here.

Q Anyone else present besides Mr. Salter, and yourself?

A No. He rang the bell and some gentleman appeared, a clerk, and he directed him to bring him the file, and he brought in the file, and my best recollection is that later in the conversation this gentleman sitting at the end of the table was sent for, and he came to his office. Now, at that time I asked where the liquor was stored, and he said the liquors were stored in the Collector of Custom's warehouse, and it was destroyed, and I asked him by what authority he did so, because the liquor was a part of this litigation, and I relied upon that.

THE COURT: Do you mean this was what you told him?

A Yes. And he said before they destroyed the liquor they had a conference with, he said he believed it was Mr. Chichester in the District Attorney's office, and it was with his knowledge. We had some further conversation about advertisement, etc., and I told him at that time that I did not believe that they were acting in good faith when they knew that the cargo was a part of the litigation in this proceeding. That was the substance of the conversation.

(Testimony of Max Schleimer)

CROSS-EXAMINATION

BY MR. IRWIN:

Q What did he say to that?

A He said that regardless of the pendency of the action that he thought he had authority under the statute to destroy the liquors, and I disagreed with him.

Q Did he say under the 1930 Tariff Act?

A I don't recall, but he mentioned some tariff act, and I told him I thought it would be a fraud upon the court, and it would be a fraud upon the Claimant if he did so.

Q In other words you just had a difference of your interpretation of the law?

A That's it. Not only a difference in interpretation, but he lulled me and my client and everybody else into the belief that the liquor would be held pending this litigation.

Q You have had a good deal of experience in libel matters?

A I don't know what you mean by that.

Q You specialize in admiralty law?

A I don't know as I have. This is the first libel experience I have had.

Q Did you ever post a bond on behalf of your client for the liquor here?

A This was done behind the stage, so to speak, and therefore, we were not notified to file a claim, because we were lulled to believe that the cargo would be determined in this action, and the bill of information, the original and the amended bill of information shows that upon its face.

(Testimony of Max Schleimer)

MR. IRWIN: Just a moment, I ask that that go out as unresponsive. I asked him if he ever filed a claim and posted a bond with the collector of customs.

THE COURT: Yes, that answer may go out.

THE WITNESS: I did not file a claim because we did not know that they were taking any other proceedings except the proceeding that was pending in court, and we were led to believe that the cargo was being adjudicated in this action, and therefore, we paid no further attention, because we knew nothing about it.

THE COURT: Now, when you say that you were led to believe, as you just cited, do you mean led to believe by what you read in the recitals set forth in the libel?

A Yes, sir.

Q Not by reason of anything anybody else told you?

A No, sir. The face of the libel of information conveyed to us the information that this litigation is for the purpose of the cargo and the vessel, and the amended libel of information, which was filed long after the matter was heard before your Honor, and long after the alleged destruction of the liquor, contained an allegation to the same thing, the cargo and the vessel, and no intimation was made that the action did not involve the cargo as well as the vessel, until long after the judgment was entered.

BY MR. IRWIN:

Q Now then, may I direct the court's attention to the petition to quash and all proceedings based thereon, which was filed May 23, 1932, by Mr. Schleimer, the first pro-

(Testimony of Max Schleimer)

ceedings after his special appearance, in paragraph 2 he states:

“That your Petitioner is the Claimant of the ‘Patricia’ herein, and appears specially and solely for the purpose of objecting to the jurisdiction of this court, and not intending to submit himself and the said vessel to the jurisdiction of this court, as a party thereto,” etc.

THE WITNESS: Because of the fact the libel of information on its face shows that this action involved the vessel and the cargo.

Q Did you examine the monition?

A No, I have never examined it until this morning, when you read it, and that involved the cargo as well.

By Mr. Irwin: That is a matter for the court to determine, I am speaking of the return on the monition.

A You are speaking of the monition, and that involved the cargo.

Q Did you ever examine the return on the monition?

A No, not until now.

THE COURT: Now, in any of the papers filed in this libel proceeding has a claim been filed on behalf of Mr. Tomikawa as against the cargo of liquor?

A In this way: I can't answer it any other way: That the claim was in an answer and the various documents that I pointed out to your Honor in one of my memorandums and the phraseology that I have used, which in my opinion I thought was sufficient, because of the fact that a criminal action was pending. I have not got that brief before me, but your Honor has my original brief, and the documents are enumerated there, and the language used. We filed a stipulation for costs, and that

(Testimony of Max Schleimer)

stipulation for costs is the usual form, and states the filing of a claim, and therefore, as a matter of law, we are estopped from disputing that.

Mr. IRWIN: May it please the court, may I direct your Honor's attention to the preamble of the answer of the claimant filed as late as October 17, 1932, entitled: "To the Honorable Judges of the District Court of the Southern District of California:

"Toichi Tomikawa, owner and claimant of the Oil Screw Vessel 'Patricia', her engines, tackle, apparel, furniture, etc., as the same are proceeded against on the libel of complaint in the above entitled action, answers said libel of complaint as follows."

There is no mention there of the cargo. It is true that on page 3 of the answer, commencing at line 1, he refers to the libel and "except that on March 23rd, 1932 the agents of the United States Coast Guard seized the Oil Screw Vessel 'Patricia', her engines, tackle, apparel, furniture, etc., and everything that was on board of said vessel," and so on.

THE WITNESS: In one of my several briefs that I submitted to the court I stated that if these documents that I have indicated do not constitute a claim under the statute, that I ask permission of the court to file a claim nunc pro tunc, etc., and your Honor has not made any ruling on my request.

THE COURT: Mr. Reporter, read that statement.

(The last statement of the witness was read by the reporter.)

THE WITNESS: In other words, I pointed out to your Honor the various documents and how I used the

(Testimony of Max Schleimer)

phraseology, and the stipulation for costs, and I then stated that if the court should decide that that is not a sufficient claim that I ask permission to file a claim nunc pro tunc. I urged also that since—

MR. IRWIN: (Interrupting) Just a moment, counsel took the stand to testify. Is this supposed to be in the matter of evidence?

THE COURT: Well, have you finished with the testimony?

MR. SCHLEIMER: Yes, your Honor.

THE COURT: Very well.

MR. SCHLEIMER: May I address the court?

THE COURT: Just a moment.

(Witness excused.)

THE COURT: Now, in addition to the libel or amended libel and the answer thereto, let the record show that there is incorporated as a part of the record of this hearing, the special appearance made on behalf of Toichi Tomikawa filed May 23rd, 1932 with Notice of Special Appearance, filed under the same date, the petition to quash seizure and all process and proceedings based thereon, filed on the same date; the Objection to Jurisdiction and Motion to quash seizure and to dismiss proceedings, filed on the same date.

Now, what is it Mr. Schleimer?

MR. SCHLEIMER: I wanted to call your Honor's attention to the last brief which was filed by Mr. Irwin, and he says, on page 3, line 13, commencing at line 13:

"In Claimant's response he says, with reference to this finding 9, that in a stipulation for costs that he filed, it was recited, 'Whereas a claim has been filed in said cause by' Claimant."

(Testimony of Max Schleimer)

Now, the specific point comes, now we have never—

MR. IRWIN: (Interrupting) I don't know what we are arguing about.

THE COURT: Counsel is making a statement to the court. Let's hear it.

MR. SCHLEIMER: (Reading): "We have never made any objection to the fact that he filed a claim in this proceeding. If he had not there would have been no proceeding. What we are contending is that he never filed a claim for the cargo, either before this court or before the Collector of Customs, and the Marshal never seized the cargo, and therefore, this court has no jurisdiction."

What I am trying to point out to your Honor is this, that we went to trial, and no objection was made and no contention was made by the Government that we did not file a claim until long after the judgment was entered, dismissing the libel, and directing the return of the cargo and the vessel to us. Long after that. Then Mr. Irwin comes along and makes this statement after I have pointed out to your Honor in the briefs and various documents the language which I contend is a sufficient claim, and in the same document I ask your Honor to consider that if you, in your wisdom, think this is not sufficient, to permit us to file a claim *nunc pro tunc*. Although personally I do not think it is necessary, in view of the fact that such objection was not made under the rules.

THE COURT: Now then, have we concluded with the introduction of the evidence?

MR. SCHLEIMER: I have introduced all in my client's behalf.

(Testimony of A. S. Minick)

THE COURT: Has the Government any further evidence?

MR. IRWIN: One short witness, yes, your Honor.

THE COURT: You may proceed.

MR. IRWIN: Mr. Minick, take the stand.

A. S. MINICK,

called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

THE CLERK: State your name, please.

THE WITNESS: A. S. Minick.

DIRECT EXAMINATION

BY MR. IRWIN:

Q What is your occupation?

A Deputy United States Marshal.

Q And did you occupy that position in June of 1930?

A I did.

Q How long have you been in the United States Marshal's office?

A Since February, 1918.

Q Do you know the boat "Patricia"?

A Yes, I do.

Q The one that is now in the custody of your office?

A Yes, sir.

Q And is the subject of this proceeding?

A I do.

Q Have you seen that boat since it has been involved in this proceeding?

A I have.

Q Did you ever see that boat before?

A I had.

(Testimony of A. S. Minick)

MR. SCHLEIMER: I object to that, your Honor, we have gone over that two times, to my knowledge, and it is in the record, and I know just what they are going to offer.

THE COURT. Let's go ahead and get through with it.

BY MR. IRWIN:

Q I direct your attention to a Marshal's return in case 4024-C, dated June 20th, 1930, and to the signature Deputy Marshal, is that your signature?

A Yes, sir.

Q And is that return made by you?

A It is.

MR. IRWIN: I offer in evidence Marshal's return of case No. 4024-C.

MR. SCHLEIMER: I object to it upon the ground it is incompetent, not within the issue, there is no allegation in the libel of information of what they are seeking to introduce now, and not in the amended libel, and no reply having been interposed or any pleading whatsoever. My recollection is the same record has been offered heretofore, and your Honor has excluded it at that time. That is my best recollection.

THE COURT: Let's see that.

MR. IRWIN: Yes, your Honor. (Handing document to the court.)

THE COURT: What is the purpose of offering this into the record?

MR. IRWIN: The purpose is this: The Claimant's motion to suppress the libel and quash the seizure and their objection is the fact that the boat, they claim, is Japanese owned, built for Japanese, as I understand it,

(Testimony of A. S. Minick)

and owned by Japanese, and this is to show a break in the title, whereby even if it was claimed that this boat was held by Japanese, that it is the subject for forfeiture and within the jurisdiction of that court, when it has been held by any other than a Japanese, and that return of the Marshal showing a sale of the boat, defeats that.

MR. SCHLEIMER: You cross-examined the Chief Clerk, I believe it was, of the Customs Office at San Pedro, when he had the original records, the registration cards and all the data and the chain of title was proved through him at that time. We know nothing about this record except that they offered it once before on one of these hearings, and your Honor excluded it at that time.

THE COURT: Well, if it is disputed that on or about June 20th, 1923 that this vessel had been—the confusion arises from the fact that the date of the signature of the witness appears to be the year reading 19230; it is apparent, however, when one examines the document in its entirety that there is a clerical error in failing to type the figure 3 over the figure 2. It is obvious a clerical error.

MR. SCHLEIMER: As I understand, your Honor, this case was libel for services.

MR. IRWIN: Before beginning my offer, or urging my offer, I would like to ask one further qualifying question.

BY MR. IRWIN:

Q Mr. Minick, do you recall the boat upon which you serviced this monition on June 30th, the boat "Patricia," do you recall that boat?

A The boat I sold, yes.

(Testimony of A. S. Minick)

Q Have you an opinion as to whether or not that boat under this case No. 4024-C and the "Patricia" in the instant case, which you have examined since it has been in the custody of your office, is one and the same boat?

A To the best of my knowledge it is one and the same boat.

Q And pursuant to and subsequent to the Marshal's return made in case No. 4024-C can you determine from an examination of this record whether or not that boat "Patricia" was sold?

A Yes, I can.

Q And was it?

A It was sold, yes.

Q Can you give us the date of this sale?

A. The date of the sale was June 20, 1930.

Q And sold to whom? One Homer Pitner?

A Yes.

MR. IRWIN: At this time, may it please the court, I renew my offer in evidence of the return by the Marshal in case No. 4024-C under date of June 23rd, 1930, of the venditioni exponas.

THE COURT: That would be the writ itself, before the return.

MR. IRWIN: I offer the writ and the return.

MR. SCHLEIMER: Objected to as incompetent, irrelevant and immaterial and not binding upon the respondent and claimant, and upon the further ground it was heretofore offered in evidence and was excluded by the court.

THE COURT: Objection overruled and exception may be noted, and the document may be received in evidence and marked Government's Exhibit 5 of this date.

(Testimony of A. S. Minick)

[Gov. EXHIBIT No. 5 ON HEARING FILED 8-7-1934.]

UNITED STATES OF AMERICA }
SOUTHERN DISTRICT OF CALIFORNIA } ss:

The President of the United States of America

To the Marshal of the United States for the
Southern District of California, GREETING:

Whereas, a Libel was filed in the District Court of the United States for the Southern District of California, on the 22nd day of May, in the year of our Lord one thousand nine hundred and thirty by Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, Marine Hardware Company, a California corporation, and Fellows & Stewart Inc., a California corporation, against the Boat "Patricia" her engines, furniture, etc., and the owners thereof, and O. Uyemoto and K. Uyejui and praying that the same may be condemned and sold to answer the prayer of the said libellants;

And whereas, the said Boat has been attached by the process issued out of the said District Court, in pursuance of the said Libel, and is, now in custody by virtue thereof; and such proceedings have been thereupon had, that by the sentence and decree of the said Court, in this cause made and pronounced, on the 10th day of June, 1930, the said Boat ordered to be sold by you, the said Marshal, after giving 6 days notice of such sale, according to law. And that you have the moneys arising from such sale, together with this writ, at a District Court of the United States, to be held for the Southern District of California,

(Testimony of A. S. Minick)

at the City of Los Angeles, on or before the 25th day of June, 1930, and that you then pay the same to the Clerk of the Court;

Therefore, you, the said Marshal, are hereby commanded to cause the said Boat so ordered to be sold, to be sold in manner and form, upon the notice, and at the time and place by law required. And that you have and pay the moneys arising from such sale pursuant to the aforesaid order or decree:

AND HAVE YOU THEN AND THERE THIS WRIT.

Witness, the HON. GEORGE COSGRAVE, Judge of said Court, at the city of Los Angeles, in the Southern District of California, this 11th day of June, in the year of our Lord one thousand nine hundred and thirty and of our Independence the one hundred and fifty-fourth

R. S. ZIMMERMAN

Clerk.

(SEAL)

By EDMUND L. SMITH

Deputy Clerk.

MARSHAL'S RETURN

In obedience to the above Precept, I have sold the Boat "PATRICIA" to Homer Pitner, 311 Calif. St., San Francisco and such sale amounts to Fifty-One Hundred (\$5100.00) Dollars which sum I have paid to the Clerk of this Court, as I am above commanded.

Dated this 20th day of June, A. D. 1930.

A. C. SITTEL, U. S. Marshal.

By A. S. MENICK, Deputy Marshal.

(Testimony of A. S. Minick)

BY MR. IRWIN:

Q I will ask you, Mr. Minick, if you saw the Mr. Pitner, to whom that boat was sold in 1930, which you have identified as the "Patricia"?

A Yes, I did, he was at the sale.

Q Have you had occasion to observe members of the Japanese race from time to time?

MR SCHLEIMER: Objected to as incompetent, irrelevant and immaterial and not binding on the respondent and claimant, and furthermore, such evidence was offered and excluded on the previous hearing.

THE COURT: You may answer.

MR. SCHLEIMER: Exception.

THE WITNESS: Yes, I have.

BY MR. IRWIN:

Q Do you know whether or not Mr. Pitner was a Japanese?

MR. SCHLEIMER: Objected to as irrelevant and immaterial and not binding on the respondent and claimant.

THE COURT: You may answer.

MR. SCHLEIMER: Exception.

THE WITNESS: He was not.

MR. IRWIN: That is all.

THE COURT: The man to whom you sold this boat was a member of the white or Caucasian race?

A Yes, he was.

(Testimony of A. S. Minick)

CROSS-EXAMINATION

BY MR. SCHLEIMER:

Q As a matter of fact, the sale which you conducted was for the purpose of the record only, and as a matter of fact K. Ogawa became the owner of the vessel, is that not so?

MR. IRWIN: Objected to as calling for a conclusion and no proper foundation laid.

THE COURT: Do you anything about what happened after you sold the boat to this Pitner?

THE WITNESS: No, I don't. Mr. Pitner, as I recall, came from San Francisco, and bid and he had a letter of credit from some bank in San Pedro, and he presented that letter to the bank at San Pedro, which was where he obtained a cashier's check for the payment of the boat.

BY MR. SCHLEIMER:

Q Is it not a fact at that time K. Ogawa registered the boat in his name in the Customs Collector's office as a Japanese vessel owned by a Japanese?

MR. IRWIN: Objected to as not proper cross-examination and no proper foundation laid, and it has not been shown that this witness knows.

THE COURT: If you have knowledge of that, Mr. Minick, you may answer.

THE WITNESS: I do not know.

MR. SCHLEIMER: That is all.

MR. IRWIN: That is all

(Witness excused.)

THE COURT: Is there any further evidence?

MR. IRWIN: No, your Honor.

THE COURT: Now, we noticed a number of books that you have there, Mr. Schleimer. Are those cases that are cited in the memorandum submitted to the court?

MR. SCHLEIMER: No. I propose to show, on the question of where there is no issue in the libel of information evidence could not be taken nor can any findings be made. Now, my contention is this—

THE COURT: (Interrupting) Well, it is almost 5 o'clock and the fact of the matter is we have had a very long and hard day. As you know, we were in session until considerably after twelve o'clock.

MR. SCHLEIMER: That is right.

THE COURT: If you will just call off those citations, we will undertake to examine them.

MR. SCHLEIMER: Osage Oil & Refining Company vs Continental Oil Company.

THE COURT: Where is it reported?

MR. SCHLEIMER: 34 Fed. (2d) 585, and at page 588, commencing with the black numbers 4 and 5.

THE COURT: Yes.

MR. SCHLEIMER: United States vs Goldstein, 271 Fed. 838, at page 845. The 4th paragraph from the top. Second Poole Company, vs Peoples' Coal Company, 188 Fed., 892, page 895, commencing with the black type figure 2. Hendryx vs Perkins, 114 Fed. 801, page 806. The last paragraph on that page. Coe vs Armour Fertilizer Works, 237 U. S. 413, at page 426. I believe there was another case in my notes that I have. Has your Honor got the Dodge case that I gave you this morning on the point of jurisdiction?

THE COURT: Yes.

MR. IRWIN: What was that citation again?

MR. SCHLEIMER: 272 U. S. 530.

Now, then, the Underwriter's case, that was cited in the Dodge case.

THE COURT: That is referred to in the Dodge opinion?

MR. SCHLEIMER: It is referred to in the lower court, but it finally landed in the United States Supreme Court, and it was known in the United States Supreme Court as *Maul vs U. S.*, 274 U. S. 501. I think that is all, your Honor.

THE COURT: Then is the matter to stand submitted?

MR. PARKER: If your Honor please, may I make a statement? At a session or two ago in this case Mr. Irwin requested the court to enter an order that I appear as *amicus curiae*, and so an order was entered. Counsel was present at that time and made no objection, but after that time he wrote a letter to your Honor and objected to my appearance. Since that objection, I have not appeared in the way of argument, otherwise than to assist Mr. Irwin. I want to ask your Honor at this time that because there was such a Minute Order entered, that an order be entered now relieving me of such appearance, so that no service of papers may have to be made on me after this.

THE COURT: Very well, that order will be vacated.

MR. IRWIN: In response to your Honor's inquiry, the matter is submitted as far as the Government is concerned.

THE COURT: Very well, we will adjourn at this time until 10:00 o'clock tomorrow morning.

(Whereupon, at 5:15 o'clock P. M., an adjournment was taken until August 8, 1934, at 10:00 o'clock A. M.)

[TITLE OF COURT AND CAUSE.]

Petition and Order Extending Term.

COMES now the respondent and Toichi Tomikawa, the claimant herein, by Max Schleimer, their proctor, and in connection with the application for appeal, moves the court to keep the term open until and including December 1, 1934, for the purpose of retaining jurisdiction to settle the narrative statement of the evidence on appeal herein, and to sign the engrossed copy thereof and the record on appeal for the reason that unless an order be made to that effect, said appellants will sustain irreparable injury.

Max Schleimer

Proctor for Appellants

And now, to wit, on this 4th day of September, 1934, on the foregoing presentation and consideration of the petition, it is,

ORDERED, that the petition is granted as prayed for, and the present term is hereby extended to and including December 1, 1934, for the purpose of passing upon the narrative statement of the evidence on appeal, to sign the engrossed narrative statement of the evidence on appeal and the record on appeal when presented.

Hollzer

United States District Judge

Filed Sep 4, 1934

[TITLE OF COURT AND CAUSE.]

Stipulation and Order Extending Time to Serve and File
a Narrative Statement of the Evidence.

It is agreed between the parties hereto, through their respective counsel, that the appellants' time within which to serve and file a proposed narrative statement of the evidence is extended to and including October 4, 1934, and that an order to that effect may be made and entered without notice to either party.

Dated, September 17, 1934.

Max Schleimer

Proctor for Appellants.

Peirson M. Hall

United States Attorney.

Ernest R. Utley

Assistant United States Attorney.

Upon the foregoing stipulation, it is ordered that appellant's time within which to serve and file a proposed narrative statement of the evidence is extended to and including October 4, 1934.

Dated, September 20, 1934.

Hollzer

Filed Sep 20, 1934

United States District Judge.

[TITLE OF COURT AND CAUSE.]

Stipulation and Order Extending Time to Serve and File
a Narrative Statement of the Evidence.

It is agreed between the parties hereto, through their respective counsel, that the appellants' time within which to serve and file a proposed narrative statement of the evidence is extended to and including November 1, 1934, and that an order to that effect may be made and entered without notice to either party.

Dated, October 3, 1934.

Max Schleimer

Max Schleimer

Proctor for Appellants.

Peirson M. Hall

Pierson M. Hall

United States Attorney.

Ernest R Utley

Ernest R Utley

Assistant United States Attorney.

Upon the foregoing stipulation, it is ordered that appellant's time within which to serve and file a proposed narrative statement of the evidence is extended to and including November 1, 1934.

Dated, October 3, 1934.

Hollzer

United States District Judge.

Filed Oct 3, 1934

[TITLE OF COURT AND CAUSE.]

Stipulation and Order Extending Time to Settle and File
the Narrative Statement of the Evidence.

It is agreed between the parties hereto, through their respective counsel, that the appellant's time within which to settle and file the narrative statement of the evidence is extended to and including December 1, 1934, and that an order to that effect may be made and entered without notice to either party.

Dated, November 1, 1934.

Max Schleimer

Max Schleimer

Proctor for Appellants.

Peirson M Hall

Pierson M. Hall

United States Attorney.

Ernest R. Utley

Ernest R. Utley

Assistant United States Attorney.

Upon the foregoing stipulation, it is ordered that appellant's time within which to settle and file the narrative statement of the evidence is extended to and including December 1, 1934.

Dated, November 1, 1934.

Hollzer

Judge United States District Court.

Filed Nov. 1, 1934.

Wherefore, to the end that the proceedings and exceptions aforesaid may be and remain of record, the respondent and claimant, within the time required by law and the orders of this court, here now present the within and foregoing narrative statement of the evidence on claimant's motion to quash said libel, exhibits, orders and all proceedings had thereon and on the trial of said libel, exhibits, orders and all proceedings had thereon on their appeal from the decree in said action, and for any and all purposes for which such narrative statement of the evidence may properly be used.

Dated, October 18, 1934.

Max Schleimer

Proctor for Respondent and Claimant.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

	:	
UNITED STATES OF AMERICA,	:	
	:	
Libelant,	:	
	:	
against	:	
	:	No. 5567-H.
AMERICAN OIL SCREW "PA- :	:	
TRICIA", No. 970-A, her cargo, :	:	
engines, tackle, apparel, furniture, :	:	
etc., :	:	
	:	
Respondent.	:	
	:	

STIPULATION THAT NARRATIVE STATEMENT OF THE EVIDENCE MAY BE SETTLED AND ALLOWED.

It is hereby stipulated and agreed, by and between the proctors for the libelant and respondent and claimant in

the above numbered and entitled action, that the within and foregoing narrative statement of the evidence, on claimant's motion to quash said libel, exhibits, orders and all proceedings had thereon, and on the trial of said libel, exhibits, orders and all proceedings had thereon is true and correct, and that the same may be settled and allowed as the engrossed said narrative statement of the evidence forthwith and without notice to either party, on this, the appeal taken by respondent and claimant herein from the decree entered herein and each and every part thereof, and for any and all purposes for which same may properly be used.

Dated, Nov 9, 1934.

Peirson M. Hall

U. S. Attorney

By Ernest R. Utley

Asst

Proctor for Appellee,

Max Schleimer

Proctor for Appellant

ORDER SETTLING NARRATIVE STATEMENT
OF THE EVIDENCE.

Upon the foregoing stipulation of the proctors for the libelant and respondent and claimant and good and sufficient cause appearing therefor, it is hereby ordered that the within and foregoing narrative statement of the evidence, on claimant's motion to quash said libel, exhibits, orders and proceedings had thereon, and on the trial of said libel, exhibits, orders and all proceedings had thereon, is true and correct, and that the same is, hereby settled and allowed and ordered filed as the engrossed said narrative statement of the evidence on this, the appeal taken by respondent and claimant herein from the decree entered herein and for any and all purposes for which same may properly be used.

Dated, Nov. 12, 1934.

Hollzer

Judge United States District Court.

[Endorsed]: Original No. 5567-H In the District Court of the United States, In and for the Southern District of California, Central Division. United States of America, Libelant, vs. American Oil Screw "Patricia," etc., Respondent. NARRATIVE STATEMENT OF THE EVIDENCE, etc. Received copy of the within Narrative Statement of the Evidence, etc., this 18th day of October, 1934. Peirson M. Hall, D. H., Attorney for Libelant. Lodged Oct. 18 1934, R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk. Filed Nov 12 1934 R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk. Max Schleimer, Attorney for Claimant 355 So. Broadway, Los Angeles, Calif. TU 7714

[TITLE OF COURT AND CAUSE.]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW

This cause came on to be heard before the Hon. Harry A. Hollzer, United States District Judge for the Southern District of California, on the libel and amended libel herein of the United States of America, and on the claim and answer of Toichi Tomikawa, and evidence both oral and documentary having been introduced herein, the Court being fully advised in the premises and the cause having been submitted to the court for decision, and the Court having made a minute order dated April 6, 1934, ordering that the second and third counts of the amended libel be sustained, and that decree be entered in conformity therewith in favor of Libelant, the Court now makes its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I.

The respondent herein, the Oil Screw Vessel known as "Patricia", loaded with a cargo of assorted intoxicating liquor on board was seized by an officer of the United States Coast Guard, Section Base No. 17, Port of Los Angeles, California, on March 23, 1932, while said Respondent vessel was on the high seas, to-wit: the Pacific Ocean, and traveling toward the coast of the United States and within four leagues of said coast, to-wit: at a point between ten and eleven miles off the nearest coast of the southerly portion of the State of California, and which said nearest coast to the said point of seizure is within the jurisdiction

of the United States District Court for the Southern District of California.

II.

That after the said seizure the said Officers of the United States Coast Guard towed the said Oil Screw Vessel "Patricia" to the United States Coast Guard Base in the harbor of San Pedro, Los Angeles, California.

III.

That after the said Vessel arrived at said United States Coast Guard Base, in custody under said seizure, the United States Collector of Customs of the Port of Los Angeles, State of California, District No. 27, adopted the aforesaid seizure made by the said officers of the United States Coast Guard under Customs Seizure 11,800 as to the Oil Screw Vessel "Patricia", her engines, tackle, apparel, furniture, etc., and as Customs Seizure No. 11,799 covering the cargo on said vessel at the time of seizure consisting of 1749 sacks of assorted spirituous liquor and 112 empty oil drums.

IV.

That thereafter the said Collector of Customs of the Port of Los Angeles, State of California, District No. 27, caused the said vessel and cargo to be appraised and that the said vessel, her engines, tackle, apparel, furniture, etc., was appraised as having a value of \$8,000.00, and that the said cargo was appraised under Section 607 of the Tariff Act of 1930 for the purpose of forfeiture proceedings as having a value not exceeding \$1,000.00, and the said cargo was appraised for the purpose of a basis of penalty against

the Master of the vessel under Sections 584 and 595 of the Tariff Act of 1930 as having a penalty value of \$17,490.00.

V.

That thereafter, to-wit: on April 1, 1932, the said United States Collector of Customs under the provisions of Section 610 of the Tariff Act of 1930, requested the United States Attorney for the Southern District of California, to institute libel proceedings against the Oil Screw Vessel "Patricia", her engines, tackle, apparel, furniture, etc., for a violation of the Customs and Navigation Laws of the United States.

VI.

That thereafter the said Collector of Customs proceeded with disposition of the said cargo under the provisions of Section 607 of the Tariff Act of 1930 by advertising for a period of three successive weeks notice of seizure and intention to dispose of said cargo as required by law, and said Section 607 of the Tariff Act of 1930; that the first publication of said notice and advertisement was duly made in the Los Angeles Times, a newspaper of general circulation in Los Angeles, California, on August 17, 1932, and the second and third publications of said notice were likewise made in the said Los Angeles Times on August 24, 1932 and August 31, 1932; that no claim was filed with the said United States Collector of Customs under the provisions of Section 608 of the Tariff Act of 1930 within the time required by said Section; that thereafter upon compliance with the said provisions of Section 608 of the Tariff Act of 1930, the said United States Collector of Customs disposed of said cargo of intoxicating liquor by destruction of same except that five cases of said intoxicating liquors

were retained to be used in evidence by the United States Attorney for the Southern District of California as required.

VII.

That thereafter, and on or about April 28, 1932, the United States Attorney for the Southern District of California filed the libel of the United States in this matter and caused this action to be instituted and caused the issuance of process of this court against the said Oil Screw Vessel "Patricia", her cargo, engines, tackle, apparel, furniture, etc.

VIII.

That under said Process so issued by this court, the United States Marshal for the Southern District of California, arrested and attached the said Oil Screw Vessel "Patricia", her engines, tackle, apparel, furniture, etc., and filed in this court his return of such arrest and attachment, and that the said United States Marshal did not arrest or attach the cargo of the said Oil Screw Vessel "Patricia".

IX.

That thereafter, to-wit: on or about May 23, 1932, Toichi Tomikawa filed herein a verified petition to quash seizure of the said Oil Screw Vessel "Patricia" and all process and proceedings based thereon and an objection to the jurisdiction of the court herein, and a special appearance entered herein by Max Schleimer as Attorney for said Claimant Toichi Tomikawa, in which said verified petition Toichi Tomikawa asserted that he was the claimant of the vessel "Patricia", and that neither in said special appearance nor in said Petition to quash seizure, nor otherwise

did said claimant, Toichi Tomikawa file in this action a claim for the cargo on board said Oil Screw Vessel "Patricia" at the time of its seizure on March 23, 1932.

X.

That thereafter, on or about October 17, 1932, claimant, Toichi Tomikawa, filed an Answer to the libel of information herein; that neither in said Answer nor otherwise did the said claimant, Toichi Tomikawa file in this action any claim for the said cargo of the said Oil Screw Vessel "Patricia."

XI.

That the Respondent Vessel "Patricia" was pulled in to the United States and within the jurisdiction of the United States District Court for the Southern District of California.

XII.

That at all the times mentioned in the amended libel and at the time of the seizure aforesaid, the respondent vessel was owned by the claimant, one Toichi Tomikawa, a subject of the Empire of Japan.

XIII.

That at the time of, and several years next preceding the seizure of the respondent vessel said claimant, Toichi Tomikawa, maintained a home and was domiciled in the United States of America in the Southern District of California.

XIV.

That on or about March 18, 1932, on application of said claimant, Toichi Tomikawa, there was awarded to the respondent vessel "Patricia" by the United States Collector

of Customs for District No. 27, the number 970-A; that at the time of said seizure the said vessel "Patricia" bore said number 970-A.

XV.

That at all times herein mentioned the said respondent vessel "Patricia" carried on its stern as the designation of the home port of said vessel the letters "L. A.," printed thereon in large letters and commonly understood to indicate "Los Angeles" as the home port of said vessel.

XVI.

That respondent vessel "Patricia" was never registered, nor licensed, nor enrolled, nor documented by the Japanese Government; that at the time of the boarding, search, and seizure referred to herein, of respondent vessel "Patricia" by the United States Coast Guard, the said respondent vessel "Patricia" was not flying the Japanese flag and was not entitled to fly the Japanese flag, and did not have a nationality certificate, nor a provisional nationality certificate of the Japanese Government.

XVII.

That on or about March 23, 1932, and within five days from the date upon which the claimant, Toichi Tomikawa secured from the United States Collector of Customs for District No. 27 at the Port of Los Angeles, California, the number 970-A, for said Oil Screw Vessel "Patricia", an officer of the United States Coast Guard, boarded the respondent vessel "Patricia" while said vessel was on the high seas, namely, the Pacific Ocean, and traveling toward the coast of the United States and within four leagues of said coast, to-wit: at a point between ten and eleven miles

off the nearest coast of the southerly portion of the State of California.

XVIII.

That at the time said officer of the United States Coast Guard boarded said respondent vessel, and prior to the search and seizure thereof, said officer requested the person in charge of said respondent vessel for the manifest and for the registration papers of said vessel, and was informed that neither any manifest nor registration papers were on board; that at said time the crew of said vessel consisted of three persons who gave their names to the Officer of the United States Coast Guard as Nick Bartich, T. Tomikawa and G. Horoto; that one of the said three members of said crew who gave his name as T. Tomikawa, is the same person as the claimant herein, Toichi Tomikawa, and that at the time of said boarding of said vessel the said Toichi Tomikawa was in charge of and was the Master of said respondent vessel "Patricia."

XIX.

That upon the failure of the Master of said vessel, or any of the persons thereon, to produce the Manifest thereof upon demand, said Officer of the United States Coast Guard seized and searched said respondent vessel and found on board thereof the cargo of assorted intoxicating liquors, the domestic value of which for use as a basis in fixing the penalty outlined in Section 584 of the Tariff Act of the United States of 1930, was later determined as aforesaid by the United States Collector of Customs to amount to the sum of Seventeen Thousand Four Hundred Ninety Dollars (\$17,490.00).

XX.

That at the time of said seizure of respondent vessel "Patricia" the Master thereof, in violation of Section 584 of the Tariff Act of 1930 (19 USCA 1584) failed and refused to produce the manifest of said respondent vessel "Patricia" in response to the demand of said officer of the Coast Guard, and by reason thereof the Master of said respondent vessel became liable to a penalty of Five Hundred Dollars (\$500.00), and to a further penalty equal to the value of the cargo of the respondent vessel "Patricia" under the provisions of Section 584 of the Tariff Act of 1930, and the said respondent vessel likewise became liable to the payment of said penalty under the provisions of Section 594 of the Tariff Act of 1930 (19 USCA 1594).

XXI.

That at the time of the boarding, search and seizure of said respondent vessel "Patricia", on March 23, 1932, the said vessel "Patricia" was engaged in trade in violation of Section 4189 of the Revised Statutes (46 USCA 60) and at the said time of the boarding, search and seizure of said respondent vessel "Patricia" the number 970-A, theretofore granted to it, by the United States Collector of Customs for District No. 27 of the Port of Los Angeles, California, was knowingly and fraudulently used for said respondent vessel, when it was not entitled to the benefit thereof and by reason of the said respondent vessel "Patricia" being at said time engaged in trade and knowingly and fraudulently using the said number 970-A when it was not entitled to the benefit thereof, the said respondent vessel "Patricia", her engines, tackle, apparel and furniture became liable to forfeiture.

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Findings of Fact the court concludes as follows:

I.

That the cargo of the vessel "Patricia" at the time of its seizure herein did not come within the jurisdiction of this court, in this libel proceeding and was rightfully and lawfully disposed of by the United States Collector of Customs for District No. 27 of the Port of Los Angeles, California, under the provisions of Section 607 of the Tariff Act of 1930.

II.

That the boarding, search and seizure of the vessel "Patricia" by the United States Coast Guard on or about March 23, 1932, was lawful and proper under the laws and statutes of the United States of America, and occurred within four leagues of the coast of the United States of America and that this court has jurisdiction of these proceedings.

III.

That Toichi Tomikawa, the Master of the said respondent vessel "Patricia", is liable to the United States for a penalty of Five Hundred Dollars (\$500.00) because of failure to produce to the officer of the United States Coast Guard boarding said vessel, on March 23, 1932, a Manifest of the said vessel under the provisions of Section 584 of the Tariff Act of 1930 (19 USCA 1584) and that the said penalty of Five Hundred Dollars (\$500.00) against said Master may be recovered from and out of and is chargeable against the said vessel "Patricia".

IV.

That by reason of his failure to produce a Manifest as aforesaid, Toichi Tomikawa, the Master of said vessel, has become liable to the United States for a penalty equal to the value of the merchandise seized as the cargo of said respondent vessel "Patricia", to the amount of Seventeen Thousand Four Hundred Ninety Dollars (\$17,490.00), and that the said penalty may be recovered from the said respondent vessel "Patricia", and that the said vessel is liable therefor under the provisions of Section 584 of the Tariff Act of 1930 (19 USCA 1584).

V.

The Court further concludes that Count 1 of the Amended Libel is not sustained and the said Count 1 should be dismissed.

VI.

That on or about March 23, 1932, the number, to-wit: 970-A granted to the said respondent vessel "Patricia" by the United States Collector of Customs for District No. 27 of the Port of Los Angeles, California, five days prior thereto, was knowingly and fraudulently used for the said vessel "Patricia" when she was not entitled to the benefit thereof, and that on said date and at the time and place of seizure the said vessel Patricia was engaged in trade in violation of Section 4189 of the Revised Statutes (46 USCA 60), for which reasons the said vessel "Patricia", her engines, tackle, apparel, furniture, etc., were subject to forfeiture to the United States of America.

The Court, therefore, orders and directs that a decree be entered herein accordingly for the forfeiture of the said respondent vessel "Patricia", her engine, tackle, apparel, furniture, etc., and disposition thereof in accordance with law, and that the libelant herein, United States of America, recover its costs of suit herein.

Done in open Court this 9th day of Aug., 1934.

Hollzer

United States District Judge.

I respectfully decline to approve the above for the reason that it is not in proper form, and for the further reasons stated in my memorandum which is herewith submitted under separate cover.

Respectfully,

Max Schleimer

Att'y for Rspt & Claimant

[Endorsed]: No. 5567-H. In the District Court of the United States for the Southern District of California Central Division. The United States of America, libelant vs. The American Oil Screw "Patricia" No. 970-A, her engines, tackle, apparel, furniture, etc., respondent, and Toichi Tomikawa, claimant. FINDINGS OF FACT AND CONCLUSIONS OF LAW. Received copy this 16th day of May, 1934 of the within proposed findings. Max Schleimer attorney for claimant. Filed Aug 9-1934 R. S. Zimmerman, Clerk By M. R. Winchell, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

THE UNITED STATES OF)	
AMERICA,	:
	Libelant, :
	:
vs.	:
	:
AMERICAN OIL SCREW :	No. 5567-H.
"PATRICIA", No. 970-A, her :	
engines, tackle, apparel, furni- :	FINAL DECREE
ture, etc.,	:
	Respondent. :
	and :
	:
TOICHI TOMIKAWA,	:
	Claimant.)

This cause having come on to be heard at this term and evidence oral and documentary having been introduced herein, and having been argued by counsel for the respective parties and having been submitted to the court for decision, the court upon consideration thereof having made and entered therein its Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the libelant herein, United States of America, have and recover under the second count of the amended libel herein, from Toichi Tomikawa, claimant herein, the Master of the respondent vessel "Patricia" a penalty of Five Hundred Dollars (\$500.00) for violation of Section 584 of the Tariff Act of 1930, and that the said respondent vessel "Patricia" is answerable and liable for the said penalty against said Master;

2. That the libelant herein, United States of America, have and recover under the second count of the amended libel herein, from Toichi Tomikawa, claimant herein, the Master of the respondent vessel "Patricia", a penalty in the sum of Seventeen Thousand Four Hundred Ninety Dollars (\$17,490.00), the value of the merchandise seized by the United States Coast Guard as the cargo of the respondent vessel "Patricia" for violation of Section 584 of the Tariff Act of 1930, and that the vessel "Patricia" is answerable and liable for the said penalty against said Master;

3. That the respondent vessel "Patricia", her engines, tackle, apparel, furniture, etc., is condemned and forfeited to the United States of America, libelant herein, under the third count of the amended libel herein, for violation of Section 4189 of the Revised Statutes.

4. It is ordered that said vessel "Patricia" be sold by the United States Marshal for the benefit of the United States of America in accordance with law.

That the libelant herein have and recover from the claimant herein, Toichi Tomikawa, its costs expended herein taxed in the sum of \$710.66.

Dated: Aug. 9, 1934.

Hollzer
United States District Judge.

I respectfully decline to approve the above for the reasons stated in my memorandum which is herewith submitted under separate cover.

Respectfully,

Max Schleimer,
Max Schleimer,
Att'y for Rspt & Claimant.

Decree entered and recorded Aug. 9-1934

R. S. ZIMMERMAN,
Clerk,

by M. R. Winchell
Deputy Clerk.

[Endorsed]: No. 5567-H. In the District Court of the United States for the Southern District of California, Central Division. The United States of America, libelant, vs. American Oil Screw "Patricia" No. 970-A, her engines, tackle, apparel, furniture, etc., respondent and Toichi Tomikawa, Claimant. FINAL DECREE. Received copy of the within Proposed Decree this 16th day of May, 1934 Max Schleimer, attorney for claimant Filed Aug. 9-1934 R. S. Zimmerman, Clerk By M. R. Winchell, Deputy Clerk.

At a stated term, to wit: The February Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday, the 10th day of August, in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable HARRY A. HOLLZER, District Judge.

UNITED STATES OF AMERICA,)	
	Libelant :
	:
vs.	: No. 5567-H.
	:
AMERICAN OIL SCREW "PA- :	
TRICIA", etc., :	
	Respondent)

Upon application of the plaintiff, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Final Decree entered herein on the 9th day of August, 1934, be amended to strike out from line 13, page 2, the following words, "Twenty-six Thousand two hundred fifty Dollars (\$26,250.00)."

[TITLE OF COURT AND CAUSE.]

NOTICE OF APPEAL.

To the United States of America, libelant, Pierson M. Hall, United States Attorney, proctor for said libelant, R. S. Zimmerman, Clerk of said court.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that, the said respondent and Toichi Tomikawa, the claimant herein, pursuant to the order made by the Honorable Harry A. Hollzer, one of the judges of said court, dated September 4, 1934, hereby appeals to the United States Circuit Court of Appeals, in and for the Ninth Circuit, from the decree entered herein, on August 9, 1934, as amended by the order made and entered on August 10, 1934, and the said respondent and claimant hereby appeal from the whole and each and every part of the said decree.

Dated, September 4, 1934.

Max Schleimer

Max Schleimer

Proctor for Appellants

355 So. Broadway Los Angeles, Calif. TU 7714

[Endorsed]: Original. No. 5567-H. United States District Court, Southern District of California, Central Division. United States of America, libelant, vs. American Oil Screw "Patricia" etc. respondents. NOTICE OF APPEAL. Filed Sep. 4 - 1934. R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk. Max Schleimer, Proctor for appellants 355 So. Broadway, Los Angeles, Calif. TU 7714

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL.

To the Honorable Harry A. Hollzer, one of the judges
of said court.

COMES now said respondent and Toichi Tomikawa, the claimant herein, by Max Schleimer, their proctor, and feeling aggrieved by the final decree made by this court herein, and entered on August 9, 1934, as amended by an order entered herein on August 10, 1934, hereby pray that an appeal may be allowed to them from the said decree to the United States Circuit Court of Appeals, in and for the Ninth Circuit, and, in connection with this petition, petitioners herewith present their assignment of errors, and they also pray that the amount of security for costs may be fixed in the sum of \$250.00 in accordance with Section 1, Rule 2, of the rules in admiralty, the United States Circuit Court of Appeals for the Ninth Circuit, by the order allowing the appeal, and that the time within which to serve and file a proposed narrative statement of the evidence be extended to and including September 20, 1934.

Dated, September 4, 1934.

Max Schleimer

Max Schleimer

Proctor for Respondent and Claimant.

[Endorsed]: Original. No. 5567-H. United States District Court, Southern District of California, Central Division United States of America, libelant vs. American Oil Screw "Patricia" etc. respondents. PETITION FOR APPEAL. Filed Sep. 4 - 1934 R. S. Zimmerman, Clerk By L Wayne Thomas, Deputy Clerk Max Schleimer, Proctor for appellants 355 So. Broadway, Los Angeles, Calif. TU 7714

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.

-		
UNITED STATES OF	:	
AMERICA,	:	
Libelant,	:	
against	:	
	:	No. 5567-H.
AMERICAN OIL SCREW	:	Assignment of
“PATRICIA”, No. 970-A, her	:	Errors.
cargo, engines, tackle, apparel,	:	
furniture, etc.,	:	
Respondent.	:	
-		

COMES now the American Oil Screw “Patricia”, etc., and Toichi Tomikawa, the respondents in the above entitled proceeding, the appellants herein, by Max Schleimer, their proctor, and in connection with their petition for appeal say that, in the record, proceedings and in the final decree herein, manifest error has intervened to the prejudice of the appellants herein, to wit:

1. That the court erred in refusing to make finding of fact “1”, namely, that K. Uyeji and O. Uyemotto, *citizen* of the Empire of Japan, in the year of 1924, built the vessel “Patricia” at the Terminal Island, California.

2. That the court erred in refusing to make finding of fact “2”, namely, that on July 12, 1924, the Collector of Customs of the Port of Los Angeles, California, District No. 27, entered in his book known as “American built and alien owned vessels”, that said vessel was built and owned

by said K. Uyeji and O. Uyemoto, citizens of the Empire of Japan.

3. That the court erred in refusing to make finding of fact "3", namely, that on July 11, 1930, the said K. Uyeji and O. Uyemoto sold said vessel to George Kioo Agawa, a citizen of the Empire of Japan, and that the then Collector of Customs of the Port of Los Angeles, California, District No. 27, entered said sale in his said book.

4. That the court erred in refusing to make finding of fact "4", namely, that on March 13, 1932, said George Kioo Agawa sold said vessel to Toichi Tomikawa, a citizen of the Empire of Japan, and the then Collector of Customs of the Port of Los Angeles, California, District No. 27, entered said sale in his said book, and thereupon allotted and gave the said vessel the number of "970-A".

5. That the court erred in refusing to make finding of fact "5", namely, that the measurements of said vessel are 82 feet length, 18.5 feet breath, 8-75 feet draft loaded, and that at the time of the seizure hereinafter stated she was equipped with a Fairbanks-Morse Engine of 1924, of 100 horse power.

6. That the court erred in refusing to make finding of fact "6", namely, that the maximum speed which said vessel could sail or traverse under her own power, at the time of the seizure hereinafter stated, was 7.9 nautical miles per hour.

7. That the court erred in refusing to make finding of fact "7", namely, that about between July 12, 1924, and March 18, 1932, the said owners of said vessel paid "light money" to the respective Collectors of Customs of

the Port of Los Angeles, California, District No. 27, on the basis of 43 tons net, 50 cents per ton, \$1.00 for 5 certificates of such payment annually during said period. That said payments were demanded by the said Collectors of Customs and paid by said owners respectively pursuant to the provisions of Section 4225 of the Revised Statutes of the United States, now known as 46 USCA 128.

8. That the court erred in refusing to make finding of fact "8", namely, that on March 23, 1932, the revenue cutter known as CG-259 of the United States Coast Guard, section base No. 17, in charge of Frederick J. Dwight, Chief Boatswain's Mate, was on the high seas of the Pacific Ocean, in search of, a reported capsized vessel and sighted said vessel "Patricia", and proceeded towards her. That when he overtook her, he came alongside of her and the said Chief Boatswain's Mate noticed that she was loaded below her water mark, and he ordered said vessel to stop. When she did so, he then placed a seaman first class on board her, and later he went on board her, without a search warrant or other process issued by a court of competent jurisdiction. That after they were on board her he opened her hatchways and found that she was loaded with sacks containing spirituous liquors. Thereupon he arrested Toichi Tomikawa, her master, the claimant herein, and her crew, and seized the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything that was on board her at that time.

9. That the court erred in refusing to make finding "10", namely, that the place of said seizure of said vessel "Patricia" was between 19 and 20 miles southeast true from San Mateo Rock of San Juan Point, California.

10. That the court erred in refusing to make finding of fact "11", namely, that the place of said seizure was ascertained by dead reckoning running from the position where the said revenue cutter started from the Point of San Clemente Island, California, in search of the reported capsized vessel.

11. That the court erred in refusing to make finding of fact "12", namely, that at the place where, and at the time when, the said seizure was made of the said vessel "Patricia", there was no vessel or vessels near her, or anywhere in sight of her.

12. That the court erred in refusing to make finding "13", namely, that said vessel "Patricia" could not sail under her own power within one hour from said place of seizure to San Mateo Rock of San Juan Point, California, which was the nearest point of land of the United States.

13. That the court erred in refusing to make finding of fact "15", namely, that after said vessel "Patricia" was at section base No. 17, San Pedro, California, in the Harbor of Los Angeles, California, in the custody of the United States Coast Guard under said seizure, the then Collector of Customs of the Port of Los Angeles, California, District No. 27, adopted the said seizure made.

14. That the court erred in refusing to make finding of fact "16", namely, that at the time the then Collector of Customs of the Port of Los Angeles, California, District No. 27, adopted the said seizure, he took into his possession and custody the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything that was on board her. The said cargo consisted of 112 empty oil drums and 1749 sacks each containing assorted spirituous liquors.

15. That the court erred in refusing to make finding of fact "17", namely, that after the Collector of Customs of the Port of Los Angeles, California, District No. 27, had taken possession and custody of the said vessel "Patricia", and her cargo, engines, tackle, apparel, furniture, and everything that was on board her, caused its value to be appraised. The said vessel "Patricia" was appraised at the sum of \$8,000, and the cargo of assorted spirituous liquors at the sum of \$17,490.00.

16. That the court erred in refusing to make finding of fact "18", namely, that on or about April 28, 1932, the then United States Attorney for the Southern District of California, Central Division, upon the request and instruction of the then Collector of Customs of the Port of Los Angeles, California, District No. 27, instituted this libel proceeding to condemn and forfeit said vessel "Patricia" and her cargo, engines, tackle, apparel, furniture, and everything that was on board her, and caused the issuance of process out of this court to arrest and attach same, and that the same was arrested and attached by the United States Marshal in and for the Southern District of California, Central Division.

17. That the court erred in refusing to make finding of fact "19", namely, that at the time and place where the said vessel "Patricia" was seized on the high seas, there was a fog, and that the said vessel was drifting in order to enable its master to ascertain his whereabouts and to get his bearings.

18. That the court erred in refusing to make finding of fact "20", namely, that at the time and place where the said vessel "Patricia", was seized on the high seas, the said Frederick J. Dwight, the Chief Boatswain's

Mate, of the revenue cutter CG-259 of the United States Coast Guard, base No. 17, or any member of its crew, did not have a search warrant or any other process authorizing him, or them, to go on board of said vessel "Patricia" to search her, or for any other purpose.

19. That the court erred in refusing to make finding of fact "21", namely, that the said Toichi Tomikawa, the master of said vessel "Patricia", the claimant herein, was, at all times hereinbefore and hereinafter stated, and is, an alien and a citizen of the Empire of Japan, and is incapable of becoming a citizen of the United States under the provisions of Section 2169 of the Revised Statutes of the United States, now known as 8 USCA 359.

20. That the court erred in refusing to make finding of fact "22", namely, that at all times hereinbefore and hereinafter stated, the domicile of the said Toichi Tomikawa, claimant herein, was, and is, in the city of Nishinomiya in the Providence of Hyogo, Japan, where he domiciled with his wife and son, and temporarily resided or sojourned, while in the United States, at Terminal Island, California.

21. That the court erred in refusing to make finding of fact "23", namely, that the Treaty between the United States and Japan, proclaimed April 5, 1911, 37 U. S. Stat. 1504-1509, Article IV, among other things provides that the citizens or subjects of Japan shall have liberty freely to come with their ships and cargoes to all places, ports and rivers in the territories of the United States; that Article XIII, Part One, among other things, provides that the citizens or subjects of Japan shall enjoy the

most-favored nation treatment in the territories of the United States.

22. That the court erred in refusing to make finding of fact "24", namely, that the Convention between the United States and Japan, proclaimed January 16, 1930, 46 U. S. Stat. 2446-2448, Article I, among other things, provides that it was the firm intention of the High Contracting Parties to uphold the principle that 3 marine miles extending from the coast line outwards and measured from the low-water mark constitutes the proper limits of the territorial waters of the United States. Article II, among other things, empowers the Government of the United States to board private vessels under the Japanese flag outside the said limits of territorial waters for the purpose of ascertaining whether the vessel, or those on board, are endeavoring to import alcoholic beverage into the United States, and its territories or possessions, in violation of its laws, providing such vessel, *are* vessels, under its own power can traverse in one hour from the place of such search to the nearest point of landing of the United States.

23. That the court erred in refusing to make finding of fact "25", namely, that the said seizure of the said vessel "Patricia" took place on the high seas of the Pacific Ocean outside of 3 marine miles extending from the coast line outwards and measured from the low-water mark, the limits of territorial waters as agreed upon by said Convention.

24. That the court erred in refusing to make finding of fact "26", namely, that the then Collector of Customs of the Port of Los Angeles, California, District No. 27,

had no power, authority or jurisdiction to allot and give the vessel "Patricia" the number "970-A", and that the allotment and giving of said number did not attach to her the same dignity as would have been the case if her owner had been a citizen of the United States.

25. That the court erred in refusing to make finding of fact "27", namely, that on the return of the monition, the respondent and Toichi Tomikawa, the appellants herein, appeared specially in this libel proceeding and made an application to set aside said seizure and to quash this proceeding upon the ground, among other things, that the said seizure was illegal and unlawful and thereby the court did not acquire jurisdiction in the premises, for the reason that the ownership of said vessel determined her nationality, and her owner being a citizen of the Empire of Japan, the nationality of said vessel was deemed as that of Japan, and that under the said Treaty and Convention the boarding her and seizure was without authority or law.

26. That the court erred in refusing to make finding of fact "28", namely, that the issues raised on said application were tried in open court, witnesses were called by the respective parties and were duly examined and cross examined by their respective proctors, and that such proceedings were had thereon that resulted in the making, filing, and entry of a minute order overruling said objection, denying said application to set aside said seizure and to quash the libel proceeding herein.

27. That the court erred in refusing to make finding of fact "29", namely, that on May 4, 1932, the Grand

Jury of this Court filed an indictment against the said Toichi Tomikawa, the master of said vessel "Patricia", the claimant herein, and his crew, which indictment, known as No. 10,898-H-CR. That thereafter they appeared specially in said criminal action and objected to the jurisdiction of the court and moved the court to quash and set aside said indictment on the ground, among others, that their arrest at the place aforesaid was illegal, unlawful, and in violation of the said Convention for the reasons, among others, stated in paragraph "25" hereof; that such proceedings were thereafter had that resulted in the making and entry of a minute order denying said application on May 20, 1932; that thereafter the said Toichi Tomikawa, the claimant and one of the appellants herein, one of the defendants in said criminal action, duly moved the court, upon the testimony and proceedings had in this libel proceeding, for a rehearing of said application to quash and set aside the said indictment upon the ground, among others, that said arrest at the said place was illegal, unlawful, and in violation of the said Convention; that such proceedings were duly had upon said application that resulted in the making and entry of a minute order on April 24, 1933, and a judgement was duly entered thereon on June 2, 1933, quashing and dismissing the indictment in the said criminal action; that the time to appeal therefrom has long ago expired and that no appeal was taken from said order and judgement by the libelant herein, the plaintiff in said criminal action, and that the said judgement is in all respects final and conclusive.

28. That the court erred in refusing to make finding of fact "30", namely, that the appellants herein includ-

ing the said Toichi Tomikawa, the master of said vessel "Patricia", the claimant herein, who was one of the defendants in said criminal action, duly requested the court in this proceeding to take judicial notice of the minute order and judgement made and entered in the said criminal action, and offered to introduce same in evidence of this proceeding and urged among other things, that the said minute order and judgement made and entered in said criminal action was a bar in this proceeding against the libelant herein on the issue that the said seizure of said vessel "Patricia", at the place aforesaid, was illegal, unlawful, and in violation of said Convention.

29. That the court erred in refusing to make finding of fact "31", namely, that thereafter such proceedings were duly had in this proceeding that resulted in the making and entry of findings of fact and conclusions of law and a decree thereon on or about June 28, 1933, adjudging, among other things, that the libel herein be dismissed upon the merits, that the said Toichi Tomikawa, the claimant herein, was entitled to the return of said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything which was on board her on March 23, 1932, at the time she was seized as hereinbefore stated.

30. That the court erred in refusing to make finding of fact "32", namely, that thereafter the court, upon the application of the libelant, made and entered herein a minute order on August 21, 1933, as modified by the minute order made and entered herein on September 15, 1933, vacating the said findings of fact and conclusions of law and decree, and continuing this cause for further

hearing on the merits in order that the court might hear further argument with particular reference to the question whether the vessel "Patricia", under the libel herein is entitled to the provisions of the said Convention, in order to stop tolling the time to appeal before the court could determine that question.

31. That the court erred in refusing to make finding of fact "33", namely, that on January 29, 1934, while the court had under consideration the question referred to in paragraph "30" hereof, said Toichi Tomikawa, claimant herein, duly moved the court to dismiss the libel upon the ground, among others, that on December 5, 1933, that 21st Amendment to the Constitution of the United States was duly proclaimed as ratified, which repealed the 18th Amendment to the Constitution of the United States, and that by reason thereof, the libel herein abated, and that the jurisdiction of the court was arrested except to enter an order dismissing the libel with direction to return to said claimant the said vessel, cargo, engines, tackle, apparel, furniture, and everything that was on board her which was seized, as hereinbefore stated.

32. That the court erred in refusing to make conclusion of law "A", namely, that when the vessel "Patricia", was built her nationality was that of Japan.

33. That the court erred in refusing to make conclusion of law "B", namely, that by purchasing the vessel, the said Toichi Tomikawa, the claimant herein, became her sole and exclusive owner.

34. That the court erred in refusing to make conclusion of law "C", namely, that Toichi Tomikawa, the

claimant herein, was, and is, a citizen of the Empire of Japan.

35. That the court erred in refusing to make conclusion of law "D", namely, that when Toichi Tomikawa, the claimant herein, became the owner of the said vessel "Patricia", her nationality was that of her said owner.

36. That the court erred in refusing to make conclusion of law "E", namely, that the actions and conduct of the said Collectors of Customs in entering said vessel in their books as an American built and alien Japanese owned vessel precludes the libelant herein from disputing that fact.

37. That the court erred in refusing to make conclusion of law "F", namely, that the actions and conduct of the said Collectors of Customs in demanding and receiving annually "light money" of the owners of said vessel during said period precludes the libelant herein from disputing the fact that the nationality of the vessel "Patricia" is Japanese.

38. That the court erred in refusing to make conclusion of law "G", namely, that the Statute which authorized the giving of a number to a vessel contemplated and was intended to apply to vessels owned exclusively by citizens of the United States, and not to American built and alien Japanese owned vessels.

39. That the court erred in refusing to make conclusion of law "H", namely, that the Collectors of Customs had no right or authority to give said vessel "Patricia" the number "970-A".

40. That the court erred in refusing to make conclusion of law "I", namely, that the giving of said num-

ber to said vessel by the Collectors of Customs did not attach any dignity to her, nor convert her into a vessel of the United States.

41. That the court erred in refusing to make conclusion of law "J", namely, that the number "970-A" and the letters "L.A." painted or appearing on the stern of said vessel at the time she was seized as aforesaid did not attach any dignity to her, nor signify that she was a vessel of the United States as contemplated by law.

42. That the court erred in refusing to make conclusion of law "K", namely, that the domicile of Toichi Tomikawa, the appellant herein was, and is, in the city of Nishinomiya in the Province of Hyogo, Japan, and was not changed by his residence within the United States.

43. That the court erred in refusing to make conclusion of law "L", namely, that the residence within the United States of Toichi Tomikawa, the appellant herein, is deemed temporary and not permanent.

44. That the court erred in refusing to make conclusion of law "M", namely, that the fact that the said vessel appeared to be loaded below her water mark did not empower or authorize the said Chief Boatswain's Mate of said revenue cutter to send one of his crew on board her and himself board her, without a search warrant or other process issued by a court of competent jurisdiction.

45. That the court erred in refusing to make conclusion of law "N", namely, that the actions of said Chief Boatswain's Mate and a member of his crew going on board of said vessel and opening her hatchways and searching for spirituous liquors without a search warrant,

was a violation of the 4th and 5th Amendments to the Constitution of the United States.

46. That the court erred in refusing to make conclusion of law "O", namely, that the actions of said Chief Boatswain's Mate and a member of his crew in searching the said vessel "Patricia" without a search warrant, and in seizing her, was null and void, illegal, and unlawful.

47. That the court erred in refusing to make conclusion of law "P", namely, that the said search and seizure of said vessel "Patricia" on the high seas, outside of 3 marine miles from the coast of the United States, constituted a violation of Article I of the said Convention proclaimed January 16, 1930, 46 U. S. Stat. pages 2446-2448.

48. That the court erred in refusing to make conclusion of law "Q", namely, that the said search and seizure of said vessel "Patricia" on the high seas, constituted a violation of Article II of the said Convention proclaimed January 16, 1930, 46 U. S. Stat. pages 2446-2448, for the reason that the said vessel was incapable of sailing under her own power within one hour from the said place of seizure to the nearest point of land of the United States.

49. That the court erred in refusing to make conclusion of law "R", namely, that the flying of a flag is merely notice to which nationality the vessel belongs but is not evidence of that fact.

50. That the court erred in refusing to make conclusion of law "S", namely, that the failure of said vessel "Patricia" to fly the Japanese flag at the time of her said

seizure, did not authorize the boarding her for said purpose nor justify her said seizure.

51. That the court erred in refusing to make conclusion of law "T", namely, that the nationality of the owner of said vessel "Patricia" and not the flying of a flag on her mast determines her nationality.

52. That the court erred in refusing to make conclusion of law "U", namely, that all proceedings based on said search and seizure are null and void, contrary to law, and are of no legal force and effect.

53. That the court erred in refusing to make conclusion of law "V", namely, that the adoption of the said seizure by the said Collector of Customs is null and void and of no legal force and effect.

54. That the court erred in refusing to make conclusion of law "W", namely, that all proceedings based upon the adoption of said seizure by the Collector of Customs are null and void and of no legal force and effect.

55. That the court erred in refusing to make conclusion of law "X", namely, that the said order and judgment in the criminal action precludes the libelant herein from disputing the nationality of the said vessel as being a Japanese vessel.

56. That the court erred in refusing to make conclusion of law "Y", namely, that the said Toichi Tomikawa, the master of said vessel "Patricia", did not violate any statute or law of the United States which subjected him to the payment of a penalty.

57. That the court erred in refusing to make conclusion of law "Z", namely, that the said Toichi Tomikawa,

the master of said vessel "Patricia", at the time of said seizure, did not violate any statute or law of the United States which subjected him to the payment of a penalty.

58. That the court erred in refusing to make conclusion of law "AA", namely, that said vessel "Particia" did not violate any statute or law of the United States which subjected her to the payment of a penalty, or condemnation, or forfeiture.

59. That the court erred in refusing to make conclusion of law "BB", namely, that said vessel "Patricia", at the time of said seizure, did not violate any statute or law of the United States which subjected her to the payment of a penalty or condemnation or forfeiture.

60. That the court erred in refusing to make conclusion of law "CC" namely, that upon the adoption of the 21st Amendment to the Constitution of the United States, which repealed the 18th Amendment thereof, this libel proceeding abated and thereby arrested the jurisdiction of the court to the premises except to order this action to be dismissed with direction to return to Toichi Tomikawa, the appellant herein, the said vessel "Patricia", her cargo, engines, tackle, apparel, furniture, and everything that was on board her at the time of said seizure.

61. That the court erred in refusing to make conclusion of law, namely, in directing the action that the libel in this proceeding be dismissed upon the merits, and that Toichi Tomikawa, the appellant herein was entitled to the return of said vessel "Patricia", her cargo, engines, tackle, apparel, furniture and everything that was on board her at the time of said seizure, and that the decree be entered in favor of said claimant, Toichi Tomikawa, the appellant

herein, against the said libelant, the United States of America, with costs to be taxed by the clerk of the court and inserted in the decree.

62. That the court erred in making finding of fact "I" so much thereof which states that the vessel "Patricia" was "traversing toward the coast of the United States".

63. That the court erred in making finding of fact "III", namely, that the Collector of Customs made two separate adoptions of the seizure namely, one of the vessel, her engines, tackle, apparel, furniture, etc., and the other of her cargo.

64. That the court erred in making finding of fact "IV", namely, that the Collector of Customs caused the cargo to be appraised under Section 607 of the Tariff Act of 1930 for the purpose of forfeiture proceedings as having a value not exceeding \$1000.00, and that said cargo was appraised for the purpose of a basis of penalty against the master of the vessel under Section 548 and 595 of the Tariff Act of 1930 as having a penalty value of \$17,490.00.

65. That the court erred in making finding of fact "V", namely, that on April 1, 1932, the Collector of Customs under the provisions of Section 610 of the Tariff Act of 1930, requested that the United States Attorney for the Southern District of California, to institute a libel proceeding against the vessel "Patricia", her engines, tackle, apparel, furniture, etc., for violation of the customs and navigation laws of the United States, and in this respect appellants allege that said requests also included the cargo.

66. That the court erred in making finding of fact "VI", namely, that the Collector of Customs proceeded with the disposition of the cargo under Section 607 of the Tariff Act of 1930 by advertising and in this regard appellant alleges that the original libel of information included the cargo and therefore the Collector of Customs had no legal right or authority to proceed with the disposition of the cargo under said Section 607.

67. That the court erred in making finding of fact "IX", namely Toichi Tomikawa, the appellant herein, did not file in this proceeding a claim for the cargo on board of the said vessel "Patricia" at the time of its seizure on March 23, 1932.

68. That the court erred in making finding of fact "X", namely that on or about August 17, 1932, Toichi Tomikawa, the appellant herein, did not with his answer nor otherwise file in this proceeding a claim for the cargo on board the vessel "Patricia".

69. That the court erred in making finding of fact "XIII", namely, that Toichi Tomikawa, the appellant herein, was domiciled in the United States of America in the Southern District of California.

70. That the court erred in making finding of fact "XV", namely, that the letters "L. A." printed on the stern of the vessel was commonly understood to indicate "Los Angeles" as the home port of said vessel.

71. That the court erred in making finding of fact "XVI", namely, that the vessel "Patricia" was never registered nor licensed, nor enrolled, nor documented by the Japanese government; that at the time of the boarding,

search, and seizure referred to herein, the said vessel was not flying the Japanese flag, and was not entitled to fly the Japanese flag, and did not have a nationality certificate, nor a provisional nationality certificate of the Japanese government, and in this regard appellants alleges that there is no evidence to support said finding and that regardless of that the nationality of the vessel "Patricia" is deemed by law to be the nationality of Japan.

72. That the court erred in making finding of fact "XVII", namely, that the vessel "Patricia" was travelling toward the coast of the United States, and in this regard appellant alleges that said finding is unsupported by any evidence, and that the undisputed evidence is to the effect that the said vessel was travelling for the purpose to enable her master to ascertain his whereabouts and his bearings because of the fact that the weather was foggy at the time, and that he did not intend to proceed to the United States of America.

73. That the court erred in making finding of fact "XVIII", namely that the officer of the United States Coast Guard, prior to the search and seizure, requested the person in charge of the vessel "Patricia" for the manifest and for the registration papers of said vessel and in this regard appellants allege that the boarding of the vessel was unlawful because the officer had no search warrant in his possession, and that the vessel "Patricia" is deemed to be a Japanese vessel and therefore had no right to search and seize her at the point or place where he boarded said vessel.

74. That the court erred in making finding of fact "XIX".

75. That the court erred in making finding of fact "XX".

76. That the court erred in making finding of fact "XXI".

77. That the court erred in making conclusion of law "I", namely, that the cargo on board of the vessel "Patricia" at the time of the seizure did not come within the jurisdiction of the court in this libel proceeding, and was rightfully and lawfully disposed of by the Collector of Customs under the provisions of Section 607 of the Tariff Act of 1930.

78. That the court erred in making conclusion of law "II", namely, that the boarding, search and seizure of the vessel "Patricia" by the United States Coast Guard on or about March 23, 1932, was lawful and proper under the laws and statutes of the United States of America, and that the court had jurisdiction of this proceeding.

79. That the court erred in making conclusion of law "III", namely, that Toichi Tomikawa, the master of the vessel "Patricia", is liable to the United States for a penalty of \$500.00 because of failure to produce to the officer of the United States Coast Guard boarding said vessel on March 23, 1932, a manifest of said vessel and that the said penalty of \$500.00 against said master may be recovered from and out of and is chargeable against said vessel "Patricia".

80. That the court erred in making conclusion of law "IV", namely, that by reason of the failure to produce a manifest, Toichi Tomikawa, the master of said vessel, became liable to the United States for a penalty according to the value of the merchandise seized as the cargo of the

vessel "Patricia" to the amount of \$17,490.00, and that said penalty may be recovered from the said vessel and that said vessel is liable therefor under the provisions of Section 584 of the Tariff Act of 1930.

81. That the court erred in making conclusion of law "VI", namely, that the number of the said vessel was knowingly and fraudulently used for said vessel and that the said vessel was engaged in trade in violation of Section 4189 of the Revised Statutes, and because of that the vessel, her engines, tackle, apparel, furniture, etc., are subject to forfeiture to the United States of America, and in this regard the appellant alleges that there is no evidence upon which this finding is predicated, and that the undisputed evidence is to the effect that when the Collector of Customs awarded the said vessel the number he was duly informed that the said vessel was an American built and alien owned vessel, and that there is no evidence to support the finding that the vessel was engaged in trade.

82. That the court erred in ordering and directing that a decree be entered for the forfeiture of the vessel "Patricia", her engines, tackle, apparel, furniture, etc., and disposition thereof in accordance with law, and that the libelant, the United States of America, recover its costs of suit.

83. That the court erred in making the decree directing that the libelant, the United States of America, have and recover under the second count of the amended libel herein, from Toichi Tomikawa, the appellant herein, the master of the vessel "Patricia", a penalty of \$500.00 for violation of Section 584 of the Tariff Act of 1930, and

that the said vessel "Patricia" is answerable to and liable for the said penalty against said master.

84. That the court erred in making the decree directing that the libelant, The United States of America, have and recover under the second count of the amended libel herein from Toichi Tomikawa, appellant herein, the master of said vessel "Patricia", a penalty in the sum of \$17,490.00, the value of the merchandise seized by the United States Coast Guard as the cargo of the said vessel "Patricia" for violation of Section 584 of the Tariff Act of 1930, and that said vessel "Patricia" is answerable and liable for the said penalty against said master.

85. That the court erred in making the decree directing that the vessel "Patricia", her engines, tackle, apparel, furniture, etc., is condemned and forfeited to the United States of America, libelant herein, under the third count of the amended libel herein for violation of Section 4189 of the Revised Statutes.

86. That the court erred in making the decree directing that the said vessel "Patricia" be sold by the United States Marshal for the benefit of the United States of America in accordance with law.

87. That the court erred in making the decree directing that the libelant herein, the United States of America, have and recover from the said Toichi Tomikawa its costs expended herein taxed in the sum of \$710.66.

88. That the court erred in ruling at the trial, that the respondent and claimant, the appellants herein, had the affirmative to go first forward with their evidence in support of their application to quash the libel herein, and

that the burden of proof was upon them to establish that the seizure was unlawful.

89. That the court erred in denying the motion of the respondent and claimant, the appellants herein, to quash the libel herein upon the ground that the court was without jurisdiction to entertain the libel of information for the reason that the original libel of information did not state the place on the high seas where the seizure was made by the Coast Guard; that the undisputed evidence was to the effect that Toichi Tomikawa was the sole and exclusive owner of the vessel "Patricia"; that he was a subject of Japan; that the nationality of the said vessel was deemed that of her owner; that said vessel was deemed Japanese vessel; that the undisputed evidence was to the effect that the said vessel could not sail or traverse under her own power, within one hour from the place of seizure to the nearest point of land of the United States, and that it was undisputed that there was no other vessel or boat near her or in sight of her at the place where she was seized.

90. That the court erred in denying the motion made by the respondent and claimant, the appellants herein, at the close of the case for judgment in their favor upon the following grounds: First, that the undisputed evidence was to the effect that at the time the vessel "Patricia" was seized, Toichi Tomikawa, the claimant herein, one of the appellants herein, was a subject of Japan; that he was the exclusive owner of said vessel; that by reason thereof, the nationality of said vessel is Japanese. Therefore, the officer of the Coast Guard had no jurisdiction or authority to go on board her and seize her at

the point or place where she was seized on high seas. Second, that the Collector of Customs had no jurisdiction, power or authority to number the vessel "Patricia" for the reason that he knew the applicant was a citizen of the Empire of Japan; that the statute relating to numbering of vessels applied exclusively to a vessel owned by a citizen of the United States; that the numbering of the vessel "Patricia" is null and void and of no legal effect. Third, that the nationality of the vessel "Patricia" must be judged by the nationality of her owner; that her owner is a citizen of the Empire of Japan; and that said vessel is deemed a Japanese vessel. Fourth, that there was no evidence that the said vessel was in contact with any other vessel or boat, on the high seas, at the point or place where she was seized; that there was no evidence that said vessel could traverse or sail under her own power, within one hour, from point or place of seizure to the nearest point of land. Fifth, that the undisputed evidence was to the effect that the maximum speed of said vessel is 7.6 nautical miles per hour, or 7.9 nautical miles per hour, and that between March 15, 1929, and March 15, 1932, said vessel, while on the high seas, could not make a speed of more than 7 knots per hour; that by reason thereof, said vessel could not have traversed or sailed in one hour from the point or place of seizure on the high seas to the nearest point of land as provided for in the Convention between the United States and the Empire of Japan, proclaimed January 16, 1930, U. S. Stat. pages 2446-2448. Sixth, that if the court should hold that said Convention did not apply to said vessel that would be tantamount to a decision of failing to give effect to its provisions; that

Article I, of said Convention expressly provided that in such event the territorial limits of the United States was to be regarded as 3 marine miles off shore. Therefore, upon libellant's own showing, the seizure was made outside of that limit and was unlawful. Seventh, that the undisputed and uncontradicted evidence was to the effect that said vessel was at the point or place of seizure solely for the purpose to ascertain her position and to get her bearings and intended to return on the high seas to the place where she had been, which was very far out on the high seas, and that when she arrived at the said point for said purpose she was seized, and because of that the Coast Guard authorities had no jurisdiction to seize her. Eighth, that the said vessel was seized on the high seas in violation of the Statutes of the United States. Ninth, that the said vessel was seized on the high seas in violation of the Convention between the United States and Japan, 46 Stat. 2446-2448.

91. That the court erred in denying the motion made by the respondent and claimant, the appellants herein to vacate and set aside the *ex parte* minute orders, dated respectively, August 21, 1933, and September 15, 1933, which vacated and set aside the judgment entered herein, and continued this cause for further argument on the merits, with particular reference to the question whether the vessel "Patricia" under libel is entitled to the provisions of the Treaty with Japan bearing date March 31, 1928, (46 Stat. 2446), upon the ground that the court, prior to the entry of the said judgment had passed upon that question several times, and that the ground assigned by the court was insufficient in law for making the said orders.

92. That the court erred in refusing to take judicial notice of the judgment entered in the case of the United States of America, plaintiff, vs. Toichi Tomikawa, et al., defendants, No. 10,898-H, which involved the same charges as in this cause and which judgment was in legal effect an acquittal and constituted *res adjudicata* in this cause.

93. That the court erred in denying the motion made by the respondent and claimant, the appellants herein, to vacate and set aside the *ex parte* minute order dated August 2, 1934, setting this cause down for further hearing with respect to the matters therein stated for the reason they were not an issue in this cause and that the evidence was immaterial.

94. That the court erred in overruling the objection made by the respondent and claimant, the appellants herein, to the introduction in evidence of the report made by Frederick J. Dwight of the seizure, marked Government's Exhibit 1 of August 7, 1934.

95. That the court erred in overruling the objection made by the respondent and claimant, the appellants herein, to the question: "Q. With particular relation to the seizure of the boat "Patricia", was there any other seizure other than No. 11,800 made by your office?" upon the ground that the question was irrelevant and immaterial, and that the pleadings admitted that the Collector of Customs adopted the seizure.

96. That the court erred in overruling the objection made by the respondent and claimant, the appellants herein, to the introduction in evidence of the report made by Frederick J. Dwight of the seizure, marked Government's Exhibit 2 of August 7, 1934, upon the ground that the

pleadings admitted that the Collector of Customs adopted the seizure, and that it was an attempt to inject a new issue, and was not in the pleadings and was not before the court.

97. That the court erred in overruling the objection made by the respondent and claimant, the appellants herein, to the introduction in evidence of the letter dated April 1, 1932, written by Howard W. Seager, Collector of Customs, by Charles W. Salter, Assistant Collector, upon the ground that the pleadings admitted that the Collector of Customs adopted the seizure and the said letter was therefore incompetent, irrelevant, and immaterial, and an attempt to inject an issue not before the court.

98. That the court erred in overruling the objection made by the respondent and claimant, the appellants herein, to the introduction in evidence of the letter dated July 8, 1933, sent by Charles W. Salter, Assistant Collector, and addressed to United States Attorney, Attention Assistant Attorney Irwin, upon the ground that it was self-serving declaration, incompetent, irrelevant, and immaterial, and not within the issues in this cause.

99. That the court erred in overruling the objection made by the respondent and claimant, the appellants herein, to the introduction in evidence of the Marshal's return in the case No. 4024-C upon the ground that it was incompetent, irrelevant and immaterial, and not binding on the appellants herein, and that the same did not prove any of the issues involved in the pleadings herein.

100. That the court erred in refusing to receive in evidence the judgment roll in the case of the United States

of America vs. Frank Oreb, et al., No. 10,898, offered by the respondent and claimant, the appellants herein, which said judgment roll showed that the court in that action determined that the vessel "Patricia" was a Japanese vessel, and that the seizure made herein was unlawful, and therefore, that judgment was res adjudicata on these issues in this cause.

WHEREFORE, appellants pray that the decree herein, of the District Court of the United States, in and for the Southern District of California, Central Division, be reversed with costs, with instructions that the amended libel of information be dismissed with costs, and that the libelant be directed to return to the claimant the vessel "Patricia", her cargo, engines, tackle, apparel, furniture, etc., and that the cause be remanded with directions to proceed in accordance with law.

Max Schleimer

Max Schleimer

Proctor for Appellants

355 So. Broadway

Los Angeles, Calif.

TU 7714

[Endorsed]: Original No. 5567-H United States District Court, Southern District of California, Central Division. United States of America, libelant vs. American Oil Screw "Patricia", etc., respondents. ASSIGNMENT OF ERRORS. Filed Sep. 4-1934 R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk. Max Schleimer, Proctor for appellants 355 So. Broadway, Los Angeles, Calif., Tu 7714

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.

UNITED STATES OF AMERICA, :	No. 5567-H.
Libelant, :	
against :	Order Allowing
AMERICAN OIL SCREW "PA- :	Appeal, Fixing
TRICIA", No. 970-A, her cargo, en- :	Amount of Bond
gines, tackle, apparel, furniture, etc., :	for Costs and
Respondent. :	Extending Time
	to File Narrative
	Statement of
	the Evidence.

And now, to wit, on this 4th day of September, 1934, on the presentation and consideration of the petition for an appeal, it is,

ORDERED, that the petition for an appeal from the decree entered herein, is granted and allowed as prayed for, and said respondent and Toichi Tomikawa, the claimant herein, within 10 days give a bond for costs of the appeal, with sufficient sureties, in the penal sum of \$250.00, conditioned that the appellants shall prosecute their appeal to effect and pay the costs, if the appeal is not sustained, in accordance with Section 1, Rule 2, of

the rules in admiralty, United States Circuit Court of Appeals, for the Ninth Circuit, and it is further

ORDERED, that the time of said respondent and claimant within which to serve and file a proposed narrative statement of the evidence herein, is hereby extended to and including September 20, 1934.

Dated, September 4, 1934.

Hollzer

U. S. District Judge.

[Endorsed]: Original No. 5567-H. United States District Court, Southern District of California, Central Division. United States of America, libelant, vs. American Oil Screw "Patricia", etc., respondents. ORDER ALLOWING APPEAL, FIXING AMOUNT OF BOND, etc. Filed Sep. 4, 1934 R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk. Max Schleimer, Proctor for appellants 355 So. Broadway, Los Angeles, Calif. Tu 7714

WESTERN SURETY COMPANY
HOME OFFICE—SIOUX FALLS,
SOUTH DAKOTA

COST BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, that we, Toichi Tomikawa, as principal, and WESTERN SURETY COMPANY, as surety, are held and firmly bound unto United States of America in the full sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said United States of America, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 4th day of September, 1934.

WHEREAS, lately, in the District Court of the United States, in and for the Southern District of California, Central Division, in a suit pending in said Court between the United States of America, libelant, against American Oil Screw "Patricia". No. 970.-A, her cargo, engines, tackle, apparel, furniture, etc. Respondent, and the said respondent and Toichi Tomikawa, have petitioned for and been allowed an appeal to the Circuit Court of *Appeal* for the ninth Circuit, and a citation has been issued directed

to the said United States of America, libelant, citing it to appear in the Circuit Court of Appeals for the ninth Circuit, within thirty days from and after the date of such citation.

NOW, the condition of the above obligation is such that if the said appellants shall prosecute said appeal to effect, and answer all costs, if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Toichi Tomkawa

TOICHI TOMIKAWA

[Seal]

BY P. F. Kirby

For WESTERN SURETY COMPANY

Peirson M. Hall,

By J. J. Irwin, Asst. U. S. Attorney

Approved as to form and sufficiency

Dated: September 4, 1934.

Hollzer

U. S. District Judge

STATE OF SOUTH DAKOTA,)

) ss.

County of Minnehaha,)

On this 4th day of September A. D. 1934, before me, a Notary Public in and for said County, personally appeared P. F. Kirby personally known to me, who being by me duly sworn, did say that he is the Vice-President of the WESTERN SURETY COMPANY of Sioux Falls, South Dakota, a corporation duly organized and existing under the laws of the State of South Dakota, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed in behalf of said corporation by authority of its Board of Directors, and further acknowledged that the said instrument and the execution thereof to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Sioux Falls, S. D., the day and year last above written.

I. Henry Harris

Notary Public.

[Endorsed]: No. 5567-H. U. S. District Court United States of America, vs. American Oil Screw "Patricia". etc. COST BOND ON APPEAL. Filed Sep. 4-1934 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk Max Schleimer, Proctor for Appellants.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.

UNITED STATES OF AMERICA, :		
	:	
Libelant, :	:	No. 5567-H.
	:	
against :	:	
	:	Amended
AMERICAN OIL SCREW "PA- :	:	Praeipie for
TRICIA", No. 970-A, her cargo, en- :	:	Record on
gines, tackle, apparel, furniture, etc., :	:	Appeal.
	:	
Respondent. :	:	

To the clerk of the above named court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed and taken in the above entitled cause, and to include in such transcript of record the following, and no other papers and exhibits, to wit:

1. Libel of information, filed on April 28, 1932.
2. Order for process to issue, filed on April 28, 1932.
3. Monition.
4. Answer to the libel of information, filed on October 17, 1932.

5. Stipulation for Costs, filed on November 17, 1932.
6. Amended libel of information, filed on March 29, 1933.
7. Findings of fact and conclusions of law, filed on August 9, 1934.
8. Decree filed and entered on August 9, 1934.
9. Minute Order amending decree, made on August 10, 1934.
10. Assignment of Errors.
11. Petition for appeal.
12. Order allowing appeal, fixing cost bond and extending time to file narrative statement of the evidence.
13. Citation on Appeal.
14. Affidavit of service of Citation on Appeal.
15. Notice of appeal.
16. Cost bond on appeal.
17. Narrative statement of the evidence.
18. This praecipe and service thereof.
19. Clerk's certificate of certification.

Said transcript to be prepared as required by law and rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on or before December 1, 1934.

Dated, October 4, 1934.

Max Schleimer

Max Schleimer

Proctor for Appellants.

It is stipulated by and between the proctors for the respective parties herein that the foregoing amended praecipe for record on appeal shall constitute the apostles on said appeal, and that the appeal be heard thereon. Service of the above praecipe is accepted and acknowledged this 18th day of October, 1934.

Dated, October 18th, 1934.

Max Schleimer

Max Schleimer

Proctor for Appellants.

Peirson M. Hall

Pierson M. Hall

United States Attorney.

Ernest R. Utley

Ernest R. Utley

Assistant United States Attorney.

Proctors for Appellee.

[Endorsed]: Original No. 5567-H United States District Court Southern District of California Central Division United States of America Libelant vs. American Oil Screw "Patricia", etc. Respondent. AMENDED PRAECIPE FOR RECORD ON APPEAL Received copy of the within Amended Praecipe this 18th day of October, 1934 Peirson M. Hall D. H. attorney for Libelant Filed Oct 27 1934 R. S. Zimmerman, Clerk by Edmund L. Smith, Deputy Clerk Max Schleimer Proctor for Appellants 355 So. Broadway Los Angeles, Calif. TU 7714.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 363 pages, numbered from 1 to 363 inclusive, to be the Apostles on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; libel of information; order for process to issue; monition with return; answer to libel of information; stipulation for costs; amended libel of information; statement of evidence; findings of fact and conclusions of law; final decree; order of August 10, 1934, amending decree; notice of appeal; petition for appeal; assignment of errors; order allowing appeal and fixing bond; cost bond on appeal, and amended praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing apostles on appeal is \$
and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing apostles on appeal amount to

.....and that said amount has been paid me by
the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the Seal of the District Court of the
United States of America, in and for the Southern
District of California, Central Division, this.....
day of November, in the year of Our Lord One
Thousand Nine Hundred and Thirty-four, and of
our Independence the One Hundred and Fifty-ninth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.

